



# Freedom of Information Act 1992

Reprinted as in force on 1 January 2006

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# Information about this reprint

This Act is reprinted as at 1 January 2006. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

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## Queensland

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# Freedom of Information Act 1992

[as amended by all amendments that commenced on or before 1 January 2006]

**An Act to require information concerning documents held by government to be made available to members of the community, to enable members of the community to obtain access to documents held by government and to enable members of the community to ensure that documents held by the government concerning their personal affairs are accurate, complete, up-to-date and not misleading, and for related purposes**

## **Part 1                      Preliminary**

### **Division 1                Introductory**

#### **1                      Short title**

This Act may be cited as the *Freedom of Information Act 1992*.

#### **2                      Commencement**

Parts 3 to 6 commence 3 months after the date of assent.

#### **3                      Deferred application to local governments**

- (1) Part 2 does not apply to local governments until 6 months after the date of assent.
- (2) Despite section 2, parts 3 to 6 do not apply to local governments until 9 months after the date of assent.

## **Division 2                    Object of Act and matters relevant to its administration and interpretation**

### **4                    Object of Act and its achievement**

- (1) The object of this Act is to extend as far as possible the right of the community to have access to information held by Queensland government.
- (2) Parliament recognises that, in a free and democratic society—
  - (a) the public interest is served by promoting open discussion of public affairs and enhancing government's accountability; and
  - (b) the community should be kept informed of government's operations, including, in particular, the rules and practices followed by government in its dealings with members of the community; and
  - (c) members of the community should have access to information held by government in relation to their personal affairs and should be given a way to ensure the information is accurate, complete, up-to-date and not misleading.
- (3) Parliament also recognises there are competing interests in that the disclosure of particular information could be contrary to the public interest because its disclosure in some instances would have a prejudicial effect on—
  - (a) essential public interests; or
  - (b) the private or business affairs of members of the community about whom information is collected and held by government.
- (4) This Act is intended to strike a balance between those competing interests.
- (5) The object of this Act is achieved by—
  - (a) giving members of the community a right of access to information held by government to the greatest extent possible with limited exceptions for the purpose of

- preventing a prejudicial effect on the public interest of a kind mentioned in subsection (3); and
- (b) requiring particular information and documents concerning government operations to be made available to the public; and
  - (c) giving members of the community a right to bring about the amendment of documents held by government containing information in relation to their personal affairs to ensure the information is accurate, complete, up-to-date and not misleading.
- (6) It is Parliament's intention that this Act be interpreted to further the object stated in subsection (1) in the context of the matters stated in subsections (2) to (5).

## 6 Matter relating to personal affairs of applicant

If an application for access to a document is made under this Act, the fact that the document contains matter relating to the personal affairs of the applicant is an element to be taken into account in deciding—

- (a) whether it is in the public interest to grant access to the applicant; and
- (b) the effect that the disclosure of the matter might have.

## Division 3 Interpretation

### 7 Definitions

In this Act—

***access charge***, in relation to an application for access to a document, means the charge prescribed under a regulation in relation to the provision of access to the document.

***agency*** has the meaning given by section 8.

***agent***, in relation to an application, means a person who makes the application on behalf of another person.

***applicant***, in relation to an application, means—

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- (a) if the application is made on behalf of a person—the person; or
- (b) otherwise—the person making the application.

**application fee**, in relation to an application for access to a document, means the application fee prescribed under a regulation.

**backup system** means a system that has, for disaster recovery purposes, copied electronic data onto a separate data storage medium, for example, onto a backup tape.

**charge** does not include an application fee.

**commissioner** means the Information Commissioner.

**competitive commercial activity** means an activity carried on, on a commercial basis, in competition with a person, other than—

- (a) the Commonwealth or a State or Territory; or
- (b) a State authority; or
- (c) a local government authority.

**concession card** means a health care card or pensioner concession card under the *Social Security Act 1991* (Cwlth) or a pensioner concession card issued by the department of the Commonwealth in which the *Veterans' Entitlements Act 1986* (Cwlth) is administered.

**coroner** means the State Coroner or another coroner under the *Coroners Act 2003*.

**corporatised corporation** has the meaning given by the *Local Government Act 1993*, chapter 8, part 7.<sup>1</sup>

**court** includes a justice and a coroner.

**document** includes—

- (a) a copy of a document; and
- (b) a part of, or extract from, a document; and
- (c) a copy of a part of, or extract from, a document.

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<sup>1</sup> *Local Government Act 1993*, chapter 8 (National competition reform of significant business activities), part 7 (Local government owned corporations)

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*Note—*

Under the *Acts Interpretation Act 1954*, section 36, **document** includes—

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and
- (c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).

***document of an agency*** or ***document of the agency*** means a document in the possession or under the control of an agency, or the agency concerned, whether created or received in the agency, and includes—

- (a) a document to which the agency is entitled to access; and
- (b) a document in the possession or under the control of an officer of the agency in the officer's official capacity.

***enactment*** means an Act or a statutory instrument.

***exempt document*** means a document that contains exempt matter, but to which access cannot be given under section 32.

***exempt matter*** means matter that is exempt under part 3, division 2.

***final assessment notice*** see schedule 4, section 11(1).

***financial hardship*** see section 35A.

***function*** includes a power.

***government*** includes an agency and a Minister.

***holder***, of a concession card, at a time the concession card is being relied on for a purpose under this Act, means an individual who is named on the concession card and would be qualified to be named on the concession card if the concession card were issued at the time the concession card is being relied on.

***holds***, in relation to an office, includes performs the duties of the office.

***objection notice*** see schedule 4, section 3(2).

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***office*** means the Office of the Information Commissioner.

***officer***, in relation to an agency, includes—

- (a) the agency's principal officer; and
- (b) a member of the agency; and
- (c) a member of the agency's staff; and
- (d) a person employed by or for the agency.

***official document of a Minister*** or ***official document of the Minister*** means a document, other than a document of an agency, in the possession or under the control of a Minister, or the Minister concerned, that relates to the affairs of an agency, and includes—

- (a) a document to which the Minister is entitled to access; and
- (b) a document in the possession or under the control of a member of the staff of, or a consultant to, the Minister in the person's capacity as such a member or consultant.

***original charge***, in relation to an application for access to a document, means an agency's or Minister's preliminary assessment of the total amount of the processing charge and access charge payable by the applicant.

***original deposit***, in relation to an application for access to a document, means, if the agency or Minister concerned considers it appropriate that an applicant pay a deposit on account of the original charge, a deposit of the amount provided for under a regulation.

***parliamentary committee*** means the Legal, Constitutional and Administrative Review Committee of the Legislative Assembly.

***policy document***, in relation to an agency, means—

- (a) a document containing interpretations, rules, guidelines, statements of policy, practices or precedents; or
- (b) a document containing particulars of an administrative scheme; or



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- (c) a document containing a statement of the way, or intended way, of administration of an enactment or administrative scheme; or
- (d) a document describing the procedures to be followed in investigating a contravention or possible contravention of an enactment or administrative scheme; or
- (e) another document of a similar kind;

that is used by the agency in connection with the performance of such of its functions as affect or are likely to affect rights, privileges or other benefits, or obligations, penalties or other detriments, to which members of the community are or may become entitled, eligible, liable or subject, but does not include an enactment that has already been published.

***preliminary assessment notice***, see schedule 4, section 1(2).

***principal officer*** means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local government—the chief executive officer (however described) of the government; or
- (c) in relation to a public authority for which a regulation declares an office to be the principal office—the holder of the office; or
- (d) in relation to another public authority—
  - (i) if it is an incorporated body that has no members—the person who manages the body's affairs; or
  - (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
  - (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

***processing charge***, in relation to an application for access to a document, means the charge prescribed under a regulation for searching for or retrieving the document, or making, or doing things related to making, a decision on the application.

**public authority** has the meaning given by section 9.

**public library** includes—

- (a) the State library; and
- (b) a local government library; and
- (c) a library in the State that forms part of a public tertiary educational institution.

**responsible Minister** means—

- (a) in relation to a department—the Minister administering the department; or
- (b) in relation to the town commission constituted under the *Alcan Queensland Pty. Limited Agreement Act 1965*—the Minister administering that Act; or
- (c) in relation to a council constituted under the *Local Government (Aboriginal Lands) Act 1978* or the *Community Services (Torres Strait) Act 1984*—the Minister administering those Acts; or
- (d) in relation to another local government—the Minister administering the *Local Government Act 1993*; or
- (e) in relation to a public authority mentioned in paragraph (a) of the definition of *public authority*—the Minister administering the Act by or under which the public authority is established; or
- (f) in relation to a public authority mentioned in paragraph (d) of that definition—the Minister administering the Act by which the office is established; or
- (g) in relation to any other public authority—the Minister declared by regulation to be the responsible Minister in relation to the public authority.

## **8 Meaning of agency**

- (1) In this Act—

**agency** means a department, local government or public authority.

- (2) For this Act—

- (a) a board, council, committee, subcommittee or other body established by government to help, or to perform functions connected with, an agency is not a separate agency, but is taken to be comprised within the agency; and
- (b) a reference to an agency includes a reference to a body that is taken to be comprised within the agency.

## 9 **Meaning of *public authority***

(1) In this Act—

***public authority*** means—

- (a) a body (whether or not incorporated) that—
  - (i) is established for a public purpose by an enactment; or
  - (ii) is established by government under an enactment for a public purpose, whether or not the public purpose is stated in the enactment; or
- (b) a body (whether or not incorporated) that is created by the Governor in Council or a Minister; or
- (c) another body (whether or not incorporated)—
  - (i) that is—
    - (A) supported directly or indirectly by government funds or other assistance or over which government is in a position to exercise control; or
    - (B) a body established by or under an enactment; and
  - (ii) that is declared by regulation to be a public authority for the purposes of this Act; or
- (d) subject to subsection (3), a person holding an office established by or under an enactment; or
- (e) a person holding an appointment—
  - (i) made by the Governor in Council or Minister otherwise than by or under an enactment; and

- (ii) that is declared by regulation to be an appointment the holder of which is a public authority for the purposes of this Act.
- (2) A person is not a public authority merely because the person holds—
- (a) an office the duties of which are performed as duties of employment as an agency's officer; or
  - (b) an office of member of a body; or
  - (c) an office established by or under an enactment for the purposes of an agency.

## **9A Notes in text**

A note in the text of this Act is part of the Act.

## **Division 4 Operation and application of Act**

### **10 Act applies to document whenever it came into existence**

A person is entitled to apply under this Act for access to a document regardless of when the document came into existence.

### **11 Act not to apply to certain bodies etc.**

- (1) This Act does not apply to—
- (a) the Governor; or
  - (b) the Legislative Assembly, a member of the Legislative Assembly, a committee of the Legislative Assembly, a member of a committee of the Legislative Assembly, a parliamentary commission of inquiry or a member of a parliamentary commission of inquiry; or
  - (c) the Parliamentary Judges Commission of Inquiry appointed under the *Parliamentary (Judges) Commission of Inquiry Act 1988*; or
  - (d) the Parliamentary Service established by the *Parliamentary Service Act 1988*; or

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- (e) a court, or the holder of a judicial office or other office connected with a court, in relation to the court's judicial functions; or
- (f) a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, so far as its or their functions relate to the court's judicial functions; or
- (fa) a tribunal, a tribunal member or the holder of an office connected with a tribunal, in relation to the tribunal's judicial or quasi-judicial functions; or
- (fb) a registry of a tribunal, or the staff of a registry of a tribunal in their official capacity, so far as its or their functions relate to the tribunal's judicial or quasi-judicial functions; or
- (h) the Fitzgerald commission of inquiry, that is, the commission of inquiry that is *the Commission* within the meaning of the *Commission of Inquiry Continuation Act 1989*; or
- (i) another commission of inquiry issued by the Governor in Council; or
- (j) an agency in relation to a document that has originated with, or has been received from, the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Inspector-General of Intelligence and Security or the Office of National Assessments, or the Defence Signals Directorate or the Defence Intelligence Organisation of the Commonwealth Department of Defence; or
- (m) Queensland Treasury Corporation in relation to its borrowing, liability and asset management related functions; or
- (n) Queensland Treasury Holdings Pty Ltd ACN 011 027 295, its wholly owned subsidiaries, and the entities controlled by the subsidiaries, in relation to their competitive commercial activities; or
- (o) the adult guardian in relation to an investigation or audit; or

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- (p) the Health Rights Commissioner, or a person appointed as a conciliator under *Health Rights Commission Act 1991*, section 75,<sup>2</sup> in relation to the conciliation of health service complaints under part 6 of that Act; or
- (q) a committee declared to be an approved quality assurance committee under the *Health Services Act 1991*, section 31(1); or
- (r) Queensland Events Corporation Pty Ltd ACN 010 814 310, its wholly owned subsidiaries, and the entities controlled by the subsidiaries, in relation to their competitive commercial activities; or
- (s) Gold Coast Events Co Pty Ltd ACN 010 949 649, its wholly owned subsidiaries, and the entities controlled by the subsidiaries, in relation to their competitive commercial activities; or
- (t) Gold Coast Motor Events Co in relation to its competitive commercial activities; or
- (u) the chief executive officer of a local government in relation to keeping a register of interests under the *Local Government Act 1993*, sections 247(1)(b) and 1139(2); or
- (v) the mayor of a local government in relation to keeping a register of interests under the *Local Government Act 1993*, section 1139(1); or
- (w) a parents and citizens association formed under the *Education (General Provisions) Act 1989*; or
- (x) a grammar school to which the *Grammar Schools Act 1975* applies; or
- (y) education agencies in relation to the following information—
  - (i) information contained in a certificate of achievement;
  - (ii) individual or systemic information about the performance of students in a test developed or

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<sup>2</sup> *Health Rights Commission Act 1991*, section 75 (Conciliation of complaints referred under s 74)

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revised under the repealed *Education (School Curriculum P-10) Act 1996*, section 13 or the *Education (Queensland Studies Authority) Act 2002*, section 19;

- (iii) individual or systemic information about the performance of students in a core skills test prepared under the repealed *Education (Senior Secondary School Studies) Act 1988*, section 6(1)(g);
  - (iv) individual or systemic student information in relation to a year 2 diagnostic net assessment;
  - (v) individual or systemic student information in relation to another type of assessment prescribed under the *Education (Queensland Studies Authority) Act 2002*, section 11(2);
  - (vi) information in relation to the ranking of a person for tertiary entrance under the repealed *Education (Tertiary Entrance Procedures Authority) Act 1990* or the *Education (Queensland Studies Authority) Act 2002*;
  - (vii) assessment data as defined under the *Education (Queensland Studies Authority) Act 2002*;
  - (viii) aggregated information as defined under the *Youth Participation in Education and Training Act 2003*, section 46(7).
- (2) In subsection (1), a reference to an entity in relation to a particular function or activity means that this Act does not apply to the entity in relation to documents received, or brought into existence, by it in performing the function or carrying on the activity.
- (3) In this section, a reference to a repealed Act includes a reference to the repealed Act as originally enacted and as in force from time to time.
- (4) In this section—

***certificate of achievement*** means a certificate, issued under the repealed *Education (Senior Secondary School Studies) Act 1988* or the *Education (Queensland Studies Authority) Act*

2002, recording details of a person's achievement in the study of an area of learning.

**control** has the meaning given by the Corporations Act.

**education agencies** means—

- (a) the Queensland Studies Authority; and
- (b) the department in which the *Education (Queensland Studies Authority) Act 2002* is administered; and
- (c) the department in which the *Youth Participation in Education and Training Act 2003* is administered.

**tribunal** means—

- (a) the Anti-Discrimination Tribunal; or
- (b) the Children Services Tribunal; or
- (c) the Commercial and Consumer Tribunal; or
- (d) the Guardianship and Administration Tribunal; or
- (e) the Land and Resources Tribunal; or
- (f) the Land Tribunal; or
- (g) the Mental Health Review Tribunal.

**wholly owned subsidiary** has the meaning given by the Corporations Act.

**year 2 diagnostic net assessment** means the process for the assessment of the literacy and numeracy development of students in the years of schooling up to and including the year 3 year of schooling.

## **11A Application of Act to GOCs**

This Act does not apply to documents received, or brought into existence, in carrying out activities of a GOC mentioned in schedule 2 to the extent provided under the application provision mentioned for the GOC in the schedule.

## **11B Application of Act to corporatised corporations**

This Act does not apply to documents received, or brought into existence, in carrying out a corporatised corporation's



activities to the extent provided under the *Local Government Act 1993*, section 1205.<sup>3</sup>

### **11C Application of Act to coronial documents**

- (1) This section applies to a document of an agency that is a coronial document under the *Coroners Act 2003*.
- (2) This Act applies to a coronial document obtained by the agency under the *Coroners Act 2003*, section 25 or 54(4).<sup>4</sup>
- (3) This Act does not apply to another coronial document if a coroner is investigating the death to which the document relates.

### **11D Application of Act to other Acts**

- (1) Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act.
- (2) Schedule 3 is included for information purposes.

### **11E Application of Act to offenders**

- (1) An offender is not entitled to obtain access to a risk assessment document received, or brought into existence, by—
  - (a) the department in which the *Corrective Services Act 2000* is administered; or
  - (b) a corrections board as defined under that Act.
- (2) In this section—

*offender* means an offender as defined under the *Corrective Services Act 2000* who is serving a term of imprisonment for a prescribed offence, or serving a period of imprisonment that includes a term of imprisonment for a prescribed offence, whether the person was sentenced to the term or period of

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3 *Local Government Act 1993*, section 1205 (Application of Freedom of Information Act and Judicial Review Act)

4 *Coroners Act 2003*, section 25 (Autopsy reports) or 54 (Access to investigation documents for other purposes)

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imprisonment before or after the commencement of this section.

*Note—*

Under the *Corrective Services Act 2000*, schedule 3, **offender** means—

- (a) a prisoner; or
- (b) a person who is subject to—
  - (i) a community based order; or
  - (ii) a conditional release order; or
  - (iii) a post-prison community based release order.

**period of imprisonment** see the *Penalties and Sentences Act 1992*, section 4.

**prescribed offence** means—

- (a) an offence against a provision mentioned in the *Penalties and Sentences Act 1992*, schedule;<sup>5</sup> or

*Note—*

See the *Penalties and Sentences Act 1992*, section 208(2).

- (b) an offence against the Criminal Code, section 302;<sup>6</sup> or
- (c) an offence against the Criminal Code, section 359E.<sup>7</sup>

**risk assessment document** means a document, or that part of a document, that assesses or is used for the assessment of—

- (a) the risk an offender may pose to the community; or
- (b) a risk to the security or good order of a corrective services facility as defined under the *Corrective Services Act 2000*.

*Example for paragraph (a)—*

a document prepared to help the chief executive make a decision under the *Corrective Services Act 2000*, section 12(3)(a), 57(2)(b), 75(2)(a) or 76(3)(a)<sup>8</sup>

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5 *Penalties and Sentences Act 1992*, schedule (Serious violent offences)

6 Criminal Code, section 302 (Definition of *murder*)

7 Criminal Code, section 359E (Punishment of unlawful stalking)

8 *Corrective Services Act 2000*, section 12 (Prisoner classifications), 57 (Eligibility for WORC and WCC programs), 75 (Eligibility for remission) or 76 (Eligibility for conditional release)

*term of imprisonment* see the *Penalties and Sentences Act 1992*, section 4.

## **12 Application of Act to Information Commissioner**

Section 20 and parts 3 and 4 do not apply to the commissioner or documents of the commissioner.

## **13 Act binds Crown**

This Act binds the Crown.

## **Division 5 Relationship with other laws**

### **14 Act not intended to prevent other publication of information etc.**

This Act is not intended to prevent or discourage—

- (a) the publication of information; or
- (b) the giving of access to documents (including documents containing exempt matter and exempt documents); or
- (c) the amendment of documents relating to the personal affairs of persons;

otherwise than under this Act if that can properly be done or is permitted or required to be done by law.

### **15 Relationship with other enactments requiring publication of information etc.**

Without limiting section 14, this Act does not affect the operation of another enactment that—

- (a) requires information concerning documents held by government to be made available to members of the community; or
- (b) enables a member of the community to obtain access to documents held by government; or

- (c) enables a member of the community to ensure that documents held by government concerning the person's personal affairs are accurate, complete, up-to-date and not misleading; or
- (d) requires the publication of information concerning government operations.

## **16 Operation of provisions of other enactments providing for non-disclosure**

- (1) This Act is intended to operate to the exclusion of the provisions of other enactments relating to non-disclosure of information.
- (2) Subsection (1) has effect subject to section 48 (Matter to which secrecy provisions of enactments apply).

## **17 Operation of Public Records Act 2002**

- (1) Without limiting section 14, this Act does not affect the provisions of the *Public Records Act 2002* relating to the giving of access to documents by the Queensland State Archives.
- (2) Without limiting section 16, the *Public Records Act 2002* does not prevent a person obtaining access to a document in the custody of Queensland State Archives to which a person may obtain access under this Act.

# **Part 2 Publication of certain documents and information**

## **18 Publication of information concerning affairs of agencies**

- (1) An agency must, within 1 year after the commencement of this section and at subsequent intervals of not more than 1 year, publish an up-to-date statement of the affairs of the agency.
- (2) The statement must contain—

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- (a) a description of the agency's structure and functions; and
- (b) a description of the ways in which the agency's functions (including, in particular, its decision-making functions) affect members of the community; and
- (c) a description of any arrangements that exist to enable members of the community to participate in the formulation of the agency's policy and the exercise of the agency's functions; and
- (d) a description of the various kinds of documents that are usually held by the agency, including—
  - (i) the kinds of documents that are available for inspection at the agency (whether or not as part of a public register) under an enactment other than this Act, whether or not inspection of any such document is subject to a fee or charge; and
  - (ii) the kinds of documents that are available for purchase from the agency; and
  - (iii) the kinds of documents that are available from the agency free of charge; and
- (e) a description of the literature available from the agency by way of subscription services or free mailing lists; and
- (f) a list of all boards, councils, committees and other bodies constituted by 2 or more persons that—
  - (i) are a part of, or that have been established for the purpose of advising, the agency; and
  - (ii) whose meetings are open to the public or the minutes of whose meetings are available for public inspection; and
- (g) a description of the arrangements that exist to enable a member of the community to obtain access to the agency's documents and to seek amendment of the agency's documents concerning the person's personal affairs; and
- (h) a description of the agency's procedures in relation to the giving of access to the agency's documents and to the amendment of the agency's documents concerning

the personal affairs of a member of the community, including—

- (i) the designation of officers to whom inquiries should be made; and
  - (ii) the addresses at which applications under this Act should be lodged; and
- (i) particulars of any reading room or other facility provided by the agency for use by applicants or members of the community, and the publications, documents or other information regularly on display in the reading room or other facility.
- (3) The statement must be published in a way approved by the Minister.
  - (4) Nothing in this section requires the publication of exempt matter.

## **19 Availability of certain documents**

- (1) An agency must make copies of—
  - (a) its most recent statement of affairs; and
  - (b) each of its policy documents;available for inspection and purchase by members of the community.
- (2) Nothing in this section prevents an agency from deleting exempt matter from a copy of a policy document.
- (3) A person must not be subjected to any prejudice because of the application of the provisions of an agency's policy document (other than provisions the agency is permitted to delete from the copies of the document) to any act or omission of the person if, at the time of the act or omission—
  - (a) the policy document was not available for inspection and purchase; and
  - (b) the person was not aware of the provisions; and
  - (c) the person could lawfully have avoided the prejudice had the person been aware of the provisions.

- (4) During the first year of the application of this section to an agency—
  - (a) the agency is required to comply with subsection (1) only to the extent that is reasonably practicable; and
  - (b) subsection (3) does not have effect.

## **20 Notices to require specification of documents in statements**

- (1) A person may serve on an agency's principal officer a written notice stating that, in the person's opinion—
  - (a) the agency has failed to publish a statement of affairs as required by this part; or
  - (b) a statement of affairs published by the agency under this part does not comply with the part.
- (2) The principal officer must within 21 days of receiving the notice—
  - (a) decide whether or not the person's opinion is correct and, if so, whether to—
    - (i) publish a statement of affairs, or further statement of affairs, as required by this part; or
    - (ii) ensure that the next statement of affairs published under this part complies with the part; and
  - (b) notify the person, in writing, of the decision.
- (3) If the principal officer decides that the person's opinion is incorrect, the notice is to—
  - (a) give the reasons for the decision; and
  - (b) inform the person of—
    - (i) the person's right to apply to the commissioner for a review of the decision under part 5; and
    - (ii) the time within which the application for review must be made.
- (4) If the principal officer fails to notify the person under subsection (2)(b), the principal officer is taken to have decided the person's opinion is incorrect.

## **Part 3                      Access to documents**

### **Division 1                Access**

#### **21        Right of access**

Subject to this Act, a person has a legally enforceable right to be given access under this Act to—

- (a) documents of an agency; and
- (b) official documents of a Minister.

#### **22        Documents to which access may be refused**

An agency or Minister may refuse access under this Act to—

- (a) a document the applicant can reasonably get access to under another enactment, or under arrangements made by an agency, whether or not the access is subject to a fee or charge; or
- (b) a document that is reasonably available for public inspection under the *Public Records Act 2002* or in a public library; or
- (c) a document that—
  - (i) is stored for preservation or safe custody in the Queensland State Archives; and
  - (ii) is a copy of a document of an agency.

#### **23        Non-official documents in Queensland State Archives etc.**

- (1) A document that—
  - (a) has been placed in the custody of Queensland State Archives or a public library by a person; and
  - (b) was not, immediately before being placed in that custody, a document of an agency or an official document of a Minister;



is available for access to members of the community under this Act, subject to any restrictions or conditions imposed by the person at the time the document was placed in the custody of the Queensland State Archives or public library.

- (2) Subsection (1) applies to a document that was placed in the custody of the Queensland State Archives or a public library by a person before the commencement of this part and, for the purposes of that application, any restrictions or conditions imposed by the person within 1 year after that commencement are taken to have been imposed by the person at the time mentioned in that subsection.

## **24 Official documents in Queensland State Archives**

- (1) For the purposes of this Act, a document that—
  - (a) has been placed in the custody of the Queensland State Archives by an agency (whether before or after the commencement of this part); and
  - (b) is not reasonably available for inspection under the *Public Records Act 2002*;

is taken to be in the agency's possession, or, if the agency no longer exists, the agency whose functions are most closely related to the document, if the agency is entitled to access to the document.

- (2) For the purposes of this Act, a document that has been placed by an agency (including the Queensland State Archives) in a place of deposit under the *Libraries Act 1988* (whether before or after the commencement of this part) or the *Public Records Act 2002* is taken to be in the agency's possession, or, if the agency no longer exists, the agency whose functions are most closely related to the document, if the agency is entitled to access to the document.

## **25 How applications for access are made**

- (1) A person who wishes to obtain access to a document of an agency or an official document of a Minister under this Act is entitled to apply to the agency or Minister for access to the document.

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*Notes—*

If a document applied for does not concern the applicant's personal affairs, the applicant must pay, at the time the application is made, an application fee (see section 35B(2)).

For applications on behalf of a child, see section 50A (Applications on behalf of children and matters affecting personal affairs of children).

- (2) The application must—
  - (a) be in writing; and
  - (b) provide sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document; and
  - (c) state the address to which notices under this Act may be sent to the applicant; and
  - (d) if the application is being made on behalf of the applicant—state the name of the applicant and the name of the applicant's agent.
- (3) The application is taken only to apply to documents that are, or may be, in existence on the day the application is received.
- (4) However, subsection (5) does not prevent an agency or Minister giving access to a document created after the application is received but before notice is given under section 34 (a *post-application document*).<sup>9</sup>
- (5) If an agency or Minister gives a person access to a post-application document—
  - (a) no processing charge or access charge is payable in relation to the document; and
  - (b) the person is not entitled to a review under section 52 or part 5<sup>10</sup> in relation to a decision about the document made in relation to the application concerned.
- (6) The application for access to a document may not require an agency or Minister to search for the document from a backup system.

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<sup>9</sup> Section 34 (Notification of decisions and reasons)

<sup>10</sup> Section 52 (Internal review) or part 5 (External review of decisions)

- (7) However, subsection (6) does not prevent an agency or Minister searching for a document from a backup system if the agency or Minister considers the search appropriate.

*Note—*

A search for a document from a backup system is not required before access may be refused under section 28B except in the circumstances mentioned in section 28B(4).

## **25A Initial duties of agency or Minister in relation to application**

- (1) If a person—
- (a) wishes to make an application under this Act to an agency or Minister for access to a document (*relevant application*); or
  - (b) has made a relevant application but it does not comply with section 25; or
  - (c) has made a relevant application, or part of a relevant application, to the wrong agency or Minister;

it is the duty of the agency or Minister to inform the person how to make the application in a way that complies with section 25 or to inform the person of the appropriate agency or Minister to whom application should be made.

- (2) An agency or Minister must not refuse to deal with an application because it does not comply with section 25 without first giving the applicant a reasonable opportunity of consultation with a view to making an application in a form complying with section 25.
- (3) If, after consulting under subsection (2), an agency or Minister decides—
- (a) the application does not contain sufficient information to enable a responsible officer of the agency or the Minister to identify the document; or
  - (b) an application fee is payable, because a document sought by the applicant does not concern the applicant's personal affairs, but is unpaid;

the agency or Minister must give the applicant written notice of the decision.

- (4) The time between the date of the notice and when the applicant gives the information or pays the application fee does not count as part of the appropriate period under section 27.<sup>11</sup>
- (5) However, the applicant is taken to have withdrawn the application if—
- (a) the applicant fails to give the information within 30 days after the day the notice of a decision under subsection (3)(a) is sent to the applicant; or
  - (b) after the applicant is sent the notice of a decision under subsection (3)(b), the applicant fails to pay the application fee—
    - (i) if an application for review is made within the period within which an application for review under this Act may be made—within 30 days after the review has been finally disposed of (unless on the review it is decided the application fee is not payable); or
    - (ii) otherwise—by the end of the period within which an application for review under this Act may be made.

## 26 Transfer of applications

- (1) In this section—  
*agency* includes a Minister.
- (2) An *agency* to which an application has been made (the *original agency*) may transfer the application to another agency if—
- (a) the document to which the application relates—
    - (i) is not held by the original agency but is, to the original agency's knowledge, held by the other agency; or

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11 Section 27 (How applications are dealt with)

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- (ii) is held by the original agency but is more closely related to the functions of the other agency; and
  - (b) the other agency consents to the transfer.
- (3) An agency that transfers an application to another agency must—
  - (a) if it holds the document to which the application relates—give a copy of the document (whether or not in the form of a written document) to the other agency with the application; and
  - (b) immediately give the applicant written notice of the transfer, specifying in the notice the day on which, and the agency to which, the application has been transferred.
- (4) An agency is not required to include exempt matter in a notice.
- (5) An application that is transferred from 1 agency to another is taken to have been received by the other agency—
  - (a) on the day on which it is transferred; or
  - (b) 14 days after the day on which it was received by the agency to which it was originally made;whichever is the earlier.
- (6) If—
  - (a) an application is made to an agency for access to more than 1 document; and
  - (b) 1 or more of the documents is a document to which subsection (2) applies;this section applies to each of the documents as if separate applications had been made to the agency for each of the documents.
- (7) If part of an application is transferred under this section and the transferred part of the application relates to a document that does not concern the applicant's personal affairs, a separate application fee is payable for the transferred part of the application.

**27 How applications are dealt with**

- (1) If an application for access to a document is made to an agency or Minister under this Act, the agency or Minister must take all reasonable steps to ensure that the applicant is notified that the application has been received as soon as practicable, but in any case not later than 14 days, after the application is received.
- (2) After considering the application, the agency or Minister must decide—
  - (a) whether access is to be given to the document; and
  - (b) if access is to be given—any charge that must be paid before access is granted; and
  - (c) any charge payable for dealing with the application.
- (3) If giving access to a document will disclose to the applicant matter the agency or Minister reasonably considers is not relevant to the application, the agency or Minister may delete the irrelevant matter from a copy of the document before giving access to the document.
- (4) The agency or Minister may give access to a document by giving access to a copy of the document with the irrelevant matter deleted only if the agency or Minister considers, from the application or after consultation with the applicant—
  - (a) the applicant would accept the copy; and
  - (b) it is reasonably practicable to give access to the copy.
- (5) If the agency or Minister fails to decide an application and notify the applicant under section 34 within—
  - (a) the appropriate period; or
  - (b) if action is required under section 51 in relation to the application—a period equal to the appropriate period plus 15 days;

the agency's principal officer or the Minister is taken to have refused access to the document to which the application relates at the end of the period.
- (6) This section does not require an agency to determine an application that has been transferred to another agency under section 26.

(7) In this section—

*appropriate period* means—

- (a) in relation to an application to an agency or Minister for a document that—
  - (i) came into existence more than 5 years before the commencement of this part; and
  - (ii) does not concern the personal affairs of the applicant;

60 days after the application is received by the agency or Minister; or
- (b) in relation to any other application—45 days after the application is received by the agency or Minister.

## **27A Calculation of appropriate period for s 27**

- (1) If an applicant gives an agency or Minister a copy of the applicant's concession card, the period commencing on the day the applicant gives the copy and ending on—
  - (a) the day the applicant is notified of the decision of the agency or Minister under schedule 4, section 8(2) or schedule 4, section 9(2)(b);<sup>12</sup> or
  - (b) the day the agency or Minister, having not notified the applicant of the decision, is taken to have made a decision under schedule 4, section 9(3);

does not count as part of the appropriate period under section 27.
- (2) If an applicant is given a preliminary assessment notice before the end of the original section 27 period applying to the application, the period commencing on the day the applicant is given the notice and ending on—
  - (a) the day the applicant—
    - (i) if no deposit is payable, agrees in writing to pay the relevant charge; or

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<sup>12</sup> Schedule 4 (Process for assessment of charges), section 8 (Concession card given and accepted) or section 9 (Concession card given but not accepted)

- (ii) pays the relevant deposit and agrees in writing to pay the relevant charge; or
- (b) the day the applicant, having not agreed to pay the relevant charge, or having not paid the relevant deposit and agreed in writing to pay the relevant charge, is notified of a decision, whether or not made on review, that no charges are payable because the charges have been wrongly assessed or are to be waived;

does not count as part of the appropriate period under section 27.

*Note—*

The appropriate period for section 27 may also be affected by section 29A(7).

- (3) In this section—

***original section 27 period***, for an application, means the period under the definition *appropriate period* in section 27(7) that would apply to the application in the absence of this section.

***relevant charge*** means the original charge or amount of the charge decided on review.

***relevant deposit*** means the original deposit or the deposit, if any, on account of the charge decided on review that the applicant is required to pay.

***review*** means consideration under this Act of an objection notice.

## **28 Refusal of access—matter or document exempt**

An agency or Minister may refuse access to exempt matter or an exempt document.

## **28A Refusal of access—document nonexistent or unlocatable**

- (1) An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.

*Example—*

documents that have not been created



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- (2) An agency or Minister may refuse access to a document if—
- (a) the agency or Minister is satisfied the document has been or should be in the agency's or Minister's possession; and
  - (b) all reasonable steps have been taken to find the document but the document can not be found.

*Examples—*

- documents that have been lost
  - documents that have been disposed of under an authority given by the State Archivist
- (3) Subject to subsection (4), a search for a document from a backup system is not required before refusing access under this section.
- (4) A search for a document from a backup system is required before refusing access under subsection (1) only if—
- (a) the document is—
    - (i) a document required to be kept under the *Public Records Act 2002*; and
    - (ii) not a document that the agency or Minister could lawfully have disposed of under the *Public Records Act 2002*; and
  - (b) the agency or Minister considers the document has been kept in, and is retrievable from, the backup system.

**29 Refusal to deal with application—agency's or Minister's functions**

- (1) An agency or Minister may refuse to deal with an application for access to documents or, if the agency or Minister is considering 2 or more applications by the applicant, all the applications, if the agency or Minister considers the work involved in dealing with the application or all the applications would, if carried out—
- (a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or

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- (b) interfere substantially and unreasonably with the performance by the Minister of the Minister's functions.
- (2) Without limiting the matters to which the agency or Minister may have regard in making a decision under subsection (1), the agency or Minister must have regard to the resources that would have to be used—
- (a) in identifying, locating or collating the documents in the filing system of the agency or the Minister's office; or
  - (b) in deciding whether to give, refuse or defer access to the documents, or to give access to edited copies of the documents, including resources that would have to be used—
    - (i) in examining the documents; or
    - (ii) in consulting with an entity in relation to the application; or
  - (c) in making a copy, or edited copy, of the documents; or
  - (d) in notifying any interim or final decision on the application.
- (3) In deciding whether to refuse, under subsection (1), to give access to documents, an agency or Minister must not have regard to—
- (a) any reasons the applicant gives for applying for access; or
  - (b) the agency's or Minister's belief about what are the applicant's reasons for applying for access.
- (4) If—
- (a) an application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and
  - (b) it appears to the agency or Minister that all of the documents to which the application relates are exempt documents;

the agency or Minister may refuse to deal with the application without having identified any or all of the documents.

- (5) The notice of the agency's or Minister's decision under subsection (4) to refuse to deal with an application must identify the provision under which the documents are exempt documents.

**29A What an agency or Minister must do before refusing to deal with application under s 29**

- (1) An agency or Minister may refuse to deal with an application under section 29(1) only if—
- (a) the agency or Minister has given the applicant a written notice—
    - (i) stating an intention to refuse to deal with the application; and
    - (ii) advising that, for a consultation period, the applicant may consult with a stated officer of the agency or a stated member of the staff of the Minister with a view to making an application in a form that would remove the ground for refusal; and
    - (iii) advising that the consultation period ends 21 days after the day the applicant is given the notice; and
    - (iv) stating the effect of subsections (2), (3), (4), (5), (6) and (7); and
  - (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the officer or member; and
  - (c) the agency or Minister has, as far as is reasonably practicable, provided the applicant with any information that would help the making of an application in a form that would remove the ground for refusal.
- (2) During consultation, the applicant and officer or member may agree what is to be the appropriate period for section 27 in relation to the application.
- (3) Following consultation, the applicant may give the officer or member written notice either confirming or altering the application.

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*Examples of alterations—*

- an alteration of the documents to which the application relates
  - an alteration of the application to state that the appropriate period for section 27 in relation to the application is to be a period that has been agreed with the officer or member
- (4) If the application is altered, section 29 applies in relation to the altered application but the other provisions of this section do not apply to it.
  - (5) If the applicant fails to consult after being given notice under subsection (1)(a), the applicant is taken to have withdrawn the application.
  - (6) Without limiting subsection (5), the applicant is taken to have failed to consult if, by the end of the consultation period, the applicant has not given the officer or member written notice under subsection (3).
  - (7) If the applicant gives the officer or member written notice altering the application to state that the appropriate period for section 27 is a period agreed under subsection (2), the agreed period is taken to be the appropriate period for section 27.
  - (8) Also, the period commencing on the day an applicant is given notice under subsection (1)(a) and ending on the day the applicant gives the agency or Minister written notice confirming or altering the application following consultation does not count as part of the appropriate period for section 27.

**29B Refusal to deal with application—previous application for same documents**

- (1) This section applies if an applicant applies to an agency or Minister (the *later application*) for access to documents that have been the subject of an earlier application made by the same applicant to the same agency or Minister (the *earlier application*).

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- (2) However, this section does not apply if the applicant withdrew the earlier application or the application was taken to be withdrawn under section 25A(5), 29A(5) or schedule 4, section 2.<sup>13</sup>
- (3) The agency or Minister may, to the extent the later application relates to documents sought under the earlier application, refuse to deal with the later application on a ground mentioned in subsection (4) if—
  - (a) the agency or Minister is satisfied the documents sought under the later application are the documents sought under the earlier application; and
  - (b) the later application has not disclosed any reasonable basis for again seeking access to the documents.
- (4) The grounds are as follows—
  - (a) the agency's or Minister's decision on the earlier application—
    - (i) is the subject of a review under part 5<sup>14</sup> and the review is not complete; or
    - (ii) has been the subject of a completed review under part 5;
  - (b) when the later application was made, the agency or Minister had not decided whether to grant access to the documents under the earlier application;
  - (c) the agency or Minister has decided this Act, or a part of this Act, does not apply to an entity—

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13 Section 25A (Initial duties of agency or Minister in relation to application), 29A (What an agency or Minister must do before refusing to deal with application under s 29) or schedule 4 (Process for assessment of charges), section 2 (Deemed withdrawal of application)

14 Part 5 (External review of decisions)

- (i) because the entity is not an agency for this Act; or
- (ii) because of section 11 or 12<sup>15</sup> or another Act;

*Note—*

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

- (d) the agency or Minister has decided—
  - (i) this Act, or a part of this Act, does not apply to the documents because of section 11, 11A, 11B, 11C or 12<sup>16</sup> or another Act; or
  - (ii) access to the documents may be refused under section 22;<sup>17</sup> or
  - (iii) the documents sought under the earlier application were exempt from disclosure;

*Note—*

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

- (e) the agency or Minister has decided the applicant is not entitled to access because of section 11E;<sup>18</sup>
- (f) the agency or Minister refused access to the documents under section 28A<sup>19</sup> in relation to the earlier application.

### **30 Forms of access**

- (1) Access to a document may be given to a person in 1 or more of the following forms—
  - (a) a reasonable opportunity to inspect the document;
  - (b) providing a copy of the document;

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15 Section 11 (Act not to apply to certain bodies etc.) or 12 (Application of Act to Information Commissioner)

16 Section 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations) or 11C (Application of Act to coronial documents)

17 Section 22 (Documents to which access may be refused)

18 Section 11E (Application of Act to offenders)

19 Section 28A (Refusal of access—document nonexistent or unlocatable)

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- (c) if the document is an article or material from which sounds or visual images are capable of being reproduced—making arrangements for the person to hear the sounds or view the images;
  - (d) if the document is one—
    - (i) by which words are recorded in a way in which they are capable of being reproduced in the form of sound; or
    - (ii) in which words are contained in the form of shorthand writing or in codified form;  
providing a written transcript of the words recorded or contained in the document;
  - (e) if—
    - (i) the application relates to information that is not contained in a written document held by the agency; and
    - (ii) the agency could create a written document containing the information using equipment that is usually available to it for retrieving or collating stored information;  
providing a written document so created.
- (2) Subject to this section and section 32, if an applicant has requested access in a particular form, access must be given in that form.
- (3) If giving access in the form requested by the applicant—
- (a) would interfere unreasonably with the operations of the agency, or the performance by the Minister of the Minister's functions; or
  - (b) would be detrimental to the preservation of the document or, having regard to the physical nature of the document, would be inappropriate; or
  - (c) would involve an infringement of the copyright of a person other than the State;
- access in that form may be refused and given in another form.

- (4) If an applicant is given access to a document in a form different to the form of access requested by the applicant, the applicant must not be required to pay a charge that is more than the charge that would have been payable if access had been given in the form requested by the applicant.
- (5) Access under subsection (1)(a) to a document to which section 23 or 24 applies must be given by affording the applicant a reasonable opportunity to inspect the document on the premises of the Queensland State Archives or public library or in an office of an agency.
- (6) If a document is more than 25 years old or in the custody of the Queensland State Archives, the State Archivist may direct that access not be given in 1 or more, but not all, of the forms mentioned in subsection (1) if, in the State Archivist's opinion, giving access in that form would be detrimental to the document's preservation or, having regard to the physical nature of the document, would be inappropriate.
- (7) This section does not prevent an agency or Minister giving access to a document in another form agreed to by the applicant.

### **31 Access may be deferred in certain cases**

An agency or Minister may defer providing access to a document for a reasonable period if the document was prepared—

- (a) for presentation to the Legislative Assembly or a committee of the Legislative Assembly; or
- (b) for release to the media; or
- (c) solely for inclusion, in the same or an amended form, in a document to be prepared for a purpose mentioned in paragraph (a) or (b);

and the document is yet to be presented or released, or included in a document to be presented or released, as the case may be.



**31A Time limit for access**

- (1) This section applies if a person who applies for access to a document under this Act is granted access to the document.
- (2) The person may obtain access to the document—
  - (a) if providing access is deferred under section 31, within—
    - (i) 60 days after the person is given notice that access is no longer deferred; and
    - (ii) any additional period allowed by the agency or Minister; or
  - (b) otherwise, within—
    - (i) 60 days after the person is given notice of the agency's or Minister's decision, or the commissioner's decision, to give the person access to the document; and
    - (ii) any additional period allowed by the agency or Minister.
- (3) If the person does not seek to obtain access to the document within the 60 days, or any additional period allowed by the agency or Minister, the person's entitlement to access under the application ends.

**32 Deletion of exempt matter**

Subject to section 35, if—

- (a) an application is made for access to a document containing exempt matter (including a document that is the subject of a certificate under section 36, 37, 42 or 42A); and
- (b) it is practicable to give access to a copy of the document from which the exempt matter has been deleted; and
- (c) it appears to the agency or Minister concerned (whether from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy;

the agency or Minister is to give access accordingly.

### **33 Persons who are to make decisions for agencies and Ministers**

- (1) An application to an agency is to be dealt with on behalf of the agency by—
  - (a) if the agency is a department or public authority—the agency’s principal officer; or
  - (b) if the agency is a local government—
    - (i) the agency’s principal officer; or
    - (ii) another officer of the agency who the local government, by resolution, nominates.
- (2) A nomination under subsection (1)(b)(ii) may be general or limited to a particular application.
- (3) An application to a Minister may be dealt with by the person the Minister directs, either generally or in a particular case.
- (4) Under subsection (1)(a), an agency’s principal officer may delegate the power to deal with the application to—
  - (a) another officer of the agency; or
  - (b) if the principal officer of a portfolio agency agrees—the principal officer of the portfolio agency.
- (5) The principal officer of a portfolio agency may subdelegate a power delegated to him or her under subsection (4)(b).
- (6) In this section—

***portfolio agency***, in relation to an agency, means another department or public authority that is administered by the Minister who administers the agency.

### **34 Notification of decisions and reasons**

- (1) An agency or Minister is to give written notice to an applicant for access of—
  - (a) the decision on the application; and
  - (b) if the application relates to a document that is not held by the agency or Minister—the fact that the document is not so held.

- (2) The notice must specify—
- (a) the day on which the decision was made; and
  - (b) if access to a document is to be given, the period within which the person may access the document under section 31A;<sup>20</sup> and
  - (c) if access to a document is to be given subject to the deletion of irrelevant matter—that irrelevant matter has been deleted from the document under section 27(3);<sup>21</sup> and
  - (d) if access is to be given to a copy of the document subject to the deletion of exempt matter—
    - (i) the fact that the document is such a copy; and
    - (ii) the provision of this Act under which the matter is exempt matter; and
    - (iii) the reasons for the decision classifying the matter as exempt matter; and
  - (e) if access to the document is to be given subject to deferral—
    - (i) the reason for the deferral; and
    - (ii) the day on which the agency or Minister expects the document to be presented or released as mentioned in section 31; and
  - (f) if access to the document is refused—the reasons for the refusal; and
  - (g) details of any public interest considerations on which the decision was based; and
  - (h) the name and designation of the officer who made the decision; and
  - (i) the rights of review conferred by this Act in relation to the decision, the procedures to be followed for exercising the rights and the time within which an application for review must be made.

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20 Section 31A (Time limit for access)

21 Section 27 (How applications are dealt with)

- (3) An agency or Minister is not required to include any exempt matter in the notice.

### **35 Information as to existence of certain documents**

- (1) Nothing in this Act requires an agency or Minister to give information as to the existence or non-existence of a document containing matter that would be exempt matter under section 36, 37, 42 or 42A.
- (2) If an application relates to a document that includes exempt matter under section 36, 37, 42 or 42A, the agency or Minister concerned may give written notice to the applicant—
  - (a) that the agency or Minister neither confirms nor denies the existence of that type of document as a document of the agency or an official document of the Minister; but
  - (b) that, assuming the existence of the document, it would be an exempt document.
- (3) If a notice is given under subsection (2)—
  - (a) section 34 applies as if the decision to give the notice were the decision on the application mentioned in that section; and
  - (b) the decision to give the notice were a decision refusing access to the document because the document would, if it existed, be exempt.

## **Division 1A Fees and charges**

### **35A Meaning of *financial hardship***

- (1) An applicant is in *financial hardship* only if the applicant is—
  - (a) the holder of a concession card; or
  - (b) a non-profit organisation in financial hardship.
- (2) Whether a non-profit organisation is in financial hardship depends on—

- (a) the nature and size of the organisation's funding base; and

*Example for paragraph (a)—*

The fact an organisation receives significant government funding may indicate its finances are strictly limited.

- (b) the amount of the original charge compared to the organisation's financial position, having regard especially to the organisation's liquid funds.

*Example for paragraph (b)—*

A charge of up to \$100 would normally not be beyond the means of an organisation unless its financial position was extremely limited.

- (3) In this section—

***non-profit organisation*** means an organisation that is not carried on for the profit or gain of its individual members.

*Examples of entities that may be non-profit organisations—*

charities, churches, clubs, environment protection societies

### **35B Fees and charges for access to documents not concerning personal affairs**

- (1) This section applies to an applicant applying for access to a document that does not concern the applicant's personal affairs.
- (2) The applicant must pay, at the time the application is made, an application fee.
- (3) The applicant must pay any processing charge and access charge before the applicant is provided access to the document.
- (4) However, a requirement to pay a processing charge applies even if—
- (a) access to the document asked for is granted and the applicant does not seek to obtain access to the document within the 60 days, or additional period, mentioned in section 31A;<sup>22</sup> or

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22 Section 31A (Time limit for access)

- (b) access to the document asked for is refused under this Act.
- (5) If the agency or Minister considers it appropriate that the applicant pay a deposit on account of any processing charge or access charge, the applicant must pay any deposit at the time required under schedule 4.<sup>23</sup>
- (6) The amount of any deposit is the amount provided for under a regulation.

### **35C Waiver of fees and charges**

- (1) An application fee may not be waived.
- (2) A processing charge or access charge may be waived only as provided under this Act.
- (3) A processing charge or access charge must be waived if the agency or Minister considers the applicant is in financial hardship.
- (4) A processing charge or access charge may also be waived under section 79(2).<sup>24</sup>

### **35D Process for assessment of charges**

The process for assessment of charges is stated in schedule 4.<sup>25</sup>

### **35E Refund of excess payment**

If an applicant pays an agency or Minister an amount for processing charges and access charges that is more than the amount of processing charges and access charges ultimately payable under this Act, the agency or Minister must refund the difference to the applicant.

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23 Schedule 4 (Process for assessment of charges)

24 Section 79 (Applications where decisions delayed)

25 Schedule 4 (Process for assessment of charges)

## Division 2                      Exempt matter

### 36      Cabinet matter

- (1) Matter is exempt matter if—
  - (a) it has been submitted to Cabinet; or
  - (b) it was prepared for submission to Cabinet and is proposed, or has at any time been proposed, by a Minister to be submitted to Cabinet; or
  - (c) it was prepared for briefing, or the use of, a Minister or chief executive in relation to a matter—
    - (i) submitted to Cabinet; or
    - (ii) that is proposed, or has at any time been proposed, to be submitted to Cabinet by a Minister; or
  - (d) it is, or forms part of, an official record of Cabinet; or
  - (e) its disclosure would involve the disclosure of any consideration of Cabinet or could otherwise prejudice the confidentiality of Cabinet considerations or operations; or
  - (f) it is a draft of matter mentioned in paragraphs (a) to (e); or
  - (g) it is a copy of or extract from, or part of a copy of or extract from, matter mentioned in paragraphs (a) to (f).
- (2) Subsection (1) does not apply to matter officially published by decision of Cabinet.
- (3) A certificate signed by the Minister stating that specified matter would, if it existed, be exempt matter mentioned in subsection (1), but not matter mentioned in subsection (2), establishes, subject to part 5,<sup>26</sup> that, if the matter exists, it is exempt matter under this section.
- (4) In this section—

***Cabinet*** includes a Cabinet committee or subcommittee.

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26 Part 5 (External review of decisions)

**chief executive** means a chief executive of a unit of the public sector.

**consideration** includes—

- (a) discussion, deliberation, noting (with or without discussion) or decision; and
- (b) consideration for any purpose, including, for example, for information or to make a decision.

**draft** includes a preliminary or working draft.

**official record**, of Cabinet, includes an official record of matters submitted to Cabinet.

**submit** matter to Cabinet includes bring the matter to Cabinet, irrespective of the purpose of submitting the matter to Cabinet, the nature of the matter or the way in which Cabinet deals with the matter.

### **37 Executive Council matter**

(1) Matter is exempt matter if—

- (a) it has been submitted to Executive Council; or
- (b) it was prepared for submission to Executive Council and is proposed, or has at any time been proposed, by a Minister to be submitted to Executive Council; or
- (c) it was prepared for briefing, or the use of, the Governor, a Minister or a chief executive in relation to a matter—
  - (i) submitted to Executive Council; or
  - (ii) that is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or
- (d) it is, or forms part of, an official record of Executive Council; or
- (e) its disclosure would involve the disclosure of any consideration of Executive Council or could otherwise prejudice the confidentiality of Executive Council considerations or operations; or



- (f) it is a draft of matter mentioned in paragraphs (a) to (e); or
  - (g) it is a copy of or extract from, or part of a copy of or extract from, matter mentioned in paragraphs (a) to (f).
- (2) Subsection (1) does not apply to matter officially published by decision of the Governor in Council.
  - (3) A certificate signed by the Minister stating that specified matter would, if it existed, be exempt matter mentioned in subsection (1), but not matter mentioned in subsection (2), establishes, subject to part 5, that, if the matter exists, it is exempt matter under this section.
  - (4) In this section—

*chief executive* means a chief executive of a unit of the public sector.

*consideration* includes—

- (a) discussion, deliberation, noting (with or without discussion) or decision; and
- (b) consideration for any purpose, including, for example, for information or to make a decision.

*draft* includes a preliminary or working draft.

*official record*, of Executive Council, includes an official record of matters submitted to Executive Council.

*submit* matter to Executive Council includes bring the matter to Executive Council, irrespective of the purpose of submitting the matter to Executive Council, the nature of the matter or the way in which Executive Council deals with the matter.

### 38 Matter affecting relations with other governments

Matter is exempt matter if its disclosure could reasonably be expected to—

- (a) cause damage to relations between the State and another government; or

- (b) divulge information of a confidential nature that was communicated in confidence by or on behalf of another government;

unless its disclosure would, on balance, be in the public interest.

**39 Matter relating to investigations by ombudsman, reviews by Service Delivery and Performance Commission or audits by Auditor-General etc.**

- (1) Matter is exempt matter if its disclosure could reasonably be expected to prejudice the conduct of—
  - (a) an investigation by the ombudsman; or
  - (b) an audit by the Auditor-General; or
  - (c) a review by the Service Delivery and Performance Commission;

unless its disclosure would, on balance, be in the public interest.

- (2) Matter is also exempt matter if its disclosure is prohibited by the *Financial Administration and Audit Act 1977*, section 92<sup>27</sup> or the *Service Delivery and Performance Commission Act 2005*, section 62 unless disclosure is required by a compelling reason in the public interest.

**40 Matter concerning certain operations of agencies**

Matter is exempt matter if its disclosure could reasonably be expected to—

- (a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency; or
- (b) prejudice the attainment of the objects of a test, examination or audit conducted by an agency; or
- (c) have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or

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<sup>27</sup> *Financial Administration and Audit Act 1977*, section 92 (Confidentiality)

- (d) have a substantial adverse effect on the conduct of industrial relations by an agency;  
unless its disclosure would, on balance, be in the public interest.

#### **41 Matter relating to deliberative processes**

- (1) Matter is exempt matter if its disclosure—
  - (a) would disclose—
    - (i) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
    - (ii) a consultation or deliberation that has taken place; in the course of, or for the purposes of, the deliberative processes involved in the functions of government; and
  - (b) would, on balance, be contrary to the public interest.
- (2) Matter is not exempt under subsection (1) if it merely consists of—
  - (a) matter that appears in an agency's policy document; or
  - (b) factual or statistical matter; or
  - (c) expert opinion or analysis by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.
- (3) Matter is not exempt under subsection (1) if it consists of—
  - (a) a report of a prescribed body or organisation established within an agency; or
  - (b) the record of, as a formal statement of the reasons for, a final decision, order or ruling given in the exercise of—
    - (i) a power; or
    - (ii) an adjudicative function; or
    - (iii) a statutory function; or
    - (iv) the administration of a publicly funded scheme.

**42 Matter relating to law enforcement or public safety**

- (1) Matter is exempt matter if its disclosure could reasonably be expected to—
- (a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (c) endanger a person's life or physical safety; or
  - (ca) result in a person being subjected to a serious act of harassment or intimidation; or
  - (d) prejudice a person's fair trial or the impartial adjudication of a case; or
  - (e) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or
  - (f) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (g) endanger the security of a building, structure or vehicle; or
- Example—*
- A safety report for a major hazard facility under the *Dangerous Goods Safety Management Act 2001*, section 47, may include exempt matter.
- (h) prejudice a system or procedure for the protection of persons, property or environment; or
  - (i) facilitate a person's escape from lawful custody; or
  - (j) prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.

(1A) Matter is also exempt matter if—

- (a) it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law); and

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- (b) the information was given under compulsion under an Act that abrogated the privilege against self-incrimination.
- (2) Matter is not exempt under subsection (1) if—
- (a) it consists of—
    - (i) matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
    - (ii) matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
    - (iii) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
    - (iv) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to misconduct under the *Crime and Misconduct Act 2001*); or
    - (v) a report on a law enforcement investigation that has already been disclosed to the person or body the subject of the investigation; and
  - (b) its disclosure would, on balance, be in the public interest.
- (3) A certificate signed by the Minister stating that a specified matter would, if it existed, be exempt matter mentioned in subsection (1), but not matter mentioned in subsection (2), establishes, subject to part 5, that, if the matter exists, it is exempt matter under this section.
- (3A) Matter is also exempt matter if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.

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- (3B) Matter is not exempt under subsection (3A) in relation to a particular applicant if—
- (a) it consists of information about the applicant; and
  - (b) the investigation has been finalised.
- (3C) A reference in this section to a repealed Act includes a reference to the repealed Act as originally enacted and as in force from time to time.
- (4) A reference in this section to a contravention or possible contravention of the law includes a reference to misconduct or possible misconduct under the *Crime and Misconduct Act 2001*.
- (5) In this section—

*law* includes law of the Commonwealth, another State, a Territory or a foreign country.

*prescribed crime body* means—

- (a) the Crime and Misconduct Commission; or
- (b) the former Criminal Justice Commission; or
- (c) the former Queensland Crime Commission.

*prescribed functions* means—

- (a) in relation to the Crime and Misconduct Commission—the crime function, and the misconduct functions, within the meaning of the *Crime and Misconduct Act 2001*; and
- (b) in relation to the former Criminal Justice Commission—the functions of the former Criminal Justice Commission under the repealed *Criminal Justice Act 1989* in relation to organised or major crime or in relation to misconduct or official misconduct within the meaning of that Act; and
- (c) in relation to the former Queensland Crime Commission—the functions of the former Queensland Crime Commission under the repealed *Crime Commission Act 1997* in relation to relevant criminal activity or major crime within the meaning of that Act.

**42A Matter relating to national or State security**

- (1) Matter is exempt matter if its disclosure could reasonably be expected to damage the security of the Commonwealth or a State.
- (2) For subsection (1), the matters relevant to the security of the Commonwealth include—
  - (a) matters relating to detecting, preventing or suppressing activities, whether within or outside Australia, that are subversive of, or hostile to, the interests of the Commonwealth or a country allied or associated with the Commonwealth; and
  - (b) the security of a communications system or cryptographic system of the Commonwealth or another country used for—
    - (i) the defence of the Commonwealth or a country allied or associated with the Commonwealth; or
    - (ii) the conduct of the international relations of the Commonwealth.
- (3) For subsection (1), the matters relevant to the security of a State include matters relating to detecting, preventing or suppressing activities, whether within or outside the State, that are subversive of, or hostile to, the interests of the State.
- (4) A certificate signed by the Minister stating that specified matter would, if it existed, be exempt matter mentioned in subsection (1) establishes, subject to part 5,<sup>28</sup> that, if the matter exists, it is exempt matter under this section.

**43 Matter affecting legal proceedings**

- (1) Matter is exempt matter if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.
- (2) Matter is not exempt under subsection (1) merely because it appears in an agency's policy document.

**44 Matter affecting personal affairs**

- (1) Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.

*Note—*

See also section 50A (Applications on behalf of children and matters affecting personal affairs of children).

- (2) Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.

- (3) If—

- (a) an application is made to an agency or Minister for access to a document of the agency or an official document of the Minister that contains health care information concerning the applicant; and
- (b) it appears to the principal officer of the agency or the Minister that the disclosure of the information to the person might be prejudicial to the physical or mental health or wellbeing of the person;

the principal officer or Minister may direct that access to the document is not to be given to the person but is to be given instead to an appropriately qualified health care professional nominated by the person and approved by the principal officer or Minister.

- (4) The principal officer or Minister may appoint an appropriately qualified health care professional to make a decision under subsection (3) on behalf of the principal officer or Minister.
- (5) A health care professional nominated and approved under subsection (3) may decide—
- (a) whether or not to disclose all or part of the information contained in the document to the applicant; and
- (b) the way in which to disclose the information to the applicant.



(6) In this section—

*appropriately qualified* means having the qualifications and experience appropriate to assess the health care information in the document.

*health care information* means information provided by a health care professional.

*health care professional* means a person who carries on, and is entitled to carry on, an occupation involving the provision of care for a person's physical or mental health or wellbeing, including, for example—

- (a) a doctor, including a psychiatrist; or
- (b) a psychologist; or
- (c) a social worker; or
- (d) a registered nurse.

#### **45 Matter relating to trade secrets, business affairs and research**

(1) Matter is exempt matter if—

- (a) its disclosure would disclose trade secrets of an agency or another person; or
- (b) its disclosure—
  - (i) would disclose information (other than trade secrets) that has a commercial value to an agency or another person; and
  - (ii) could reasonably be expected to destroy or diminish the commercial value of the information; or
- (c) its disclosure—
  - (i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and

- (ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to government;  
unless its disclosure would, on balance, be in the public interest.
- (2) Matter is not exempt under subsection (1) merely because it concerns the business, professional, commercial or financial affairs of the person by, or on whose behalf, an application for access to the document containing the matter is being made.
- (3) Matter is exempt matter if—
  - (a) it would disclose the purpose or results of research, whether or not the research is yet to be started, the research has started but is unfinished, or the research is finished; and
  - (b) its disclosure could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research was, is being, or is intended to be, carried out.
- (4) Matter is not exempt under subsection (3) merely because it concerns research that was, is being, or is intended to be, carried out by the agency or other person by, or on whose behalf, an application for access to the document containing the matter is being made.

#### **46 Matter communicated in confidence**

- (1) Matter is exempt if—
  - (a) its disclosure would found an action for breach of confidence; or
  - (b) it consists of information of a confidential nature that was communicated in confidence, the disclosure of which could reasonably be expected to prejudice the future supply of such information, unless its disclosure would, on balance, be in the public interest.
- (2) Subsection (1) does not apply to matter of a kind mentioned in section 41(1)(a) unless it consists of information communicated by a person or body other than—

- (a) a person in the capacity of—
  - (i) a Minister; or
  - (ii) a member of the staff of, or a consultant to, a Minister; or
  - (iii) an officer of an agency; or
- (b) the State or an agency.

#### **47 Matter affecting the economy of State**

- (1) Matter is exempt matter if its disclosure could reasonably be expected—
  - (a) to have a substantial adverse effect on the ability of government to manage the economy of the State; or
  - (b) to expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Legislative Assembly or government in the course of, or for the purpose of, managing the economy of the State;unless its disclosure would, on balance, be in the public interest.
- (2) Without limiting subsection (1)(a), that paragraph applies to matter the disclosure of which would reveal—
  - (a) the consideration of a contemplated movement in government taxes, fees or charges; or
  - (b) the imposition of credit controls.

#### **47A Matter relating to investment incentive scheme**

- (1) Matter is exempt matter if its disclosure could reasonably be expected to disclose information about—
  - (a) a particular incentive given to or arranged for a relevant person under an investment incentive scheme; or
  - (b) an incentive sought by or proposed for a relevant person whether or not an incentive was, in fact, given to or

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arranged for the relevant person under an investment incentive scheme.

(2) In this section—

***department*** means the department administered by the Minister having responsibility for business, industry development, and investment opportunities and attraction as identified in the Administrative Arrangements and within which that responsibility is administered.

***incentive*** includes any of the following—

- (a) an amount that is a refund of all or part of an amount paid as a tax, fee or charge;
- (b) another amount, whether as a lump sum or by instalments;
- (c) a benefit that is not an amount mentioned in paragraph (a) or (b).

***investment incentive scheme*** means a written scheme to promote projects by providing incentives, that includes processes for assessing an application under the scheme and is administered by the department.

***project*** means a project or proposed project that involves investing or spending money, or the continued investing or spending of money, and is intended to create job opportunities or to continue existing jobs.

***relevant person*** means a person to the extent the person is or was any 1 or more of the following—

- (a) a person who inquires of, or enters into discussions with, the department or a public service employee about an incentive for a project, whether or not the person makes an application under an investment incentive scheme for an incentive;
- (b) a person who makes an application under an investment incentive scheme, whether or not the person is given an incentive;
- (c) a person who is given an incentive for a project, whether or not the person continues to be subject to a provision of an agreement about the incentive that allows the department to monitor the person or project.

**48 Matter to which secrecy provisions of enactments apply**

- (1) Matter is exempt matter if its disclosure is prohibited by an enactment mentioned in the schedule 1 unless disclosure is required by a compelling reason in the public interest.
- (2) Matter is not exempt under subsection (1) if it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to the document containing the matter is being made.

**49 Matter affecting financial or property interests**

Matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency unless its disclosure would, on balance, be in the public interest.

**50 Matter disclosure of which would be contempt of Parliament or contempt of court**

Matter is exempt matter if its public disclosure would, apart from this Act and any immunity of the Crown—

- (a) be in contempt of court; or
- (b) be contrary to an order made or direction given by—
  - (i) a royal commission or commission of inquiry; or
  - (ii) a person or body having power to take evidence on oath; or
- (c) infringe the privileges of—
  - (i) Parliament; or
  - (ii) the Parliament of the Commonwealth or a State or a House of such a Parliament; or
  - (iii) the Legislative Assembly of the Australian Capital Territory, the Northern Territory or Norfolk Island.

## **Division 2A            Children**

### **50A    Applications on behalf of children and matters affecting personal affairs of children**

- (1) Without limiting the ability of persons to make applications on behalf of children, an application may be made under section 25<sup>29</sup> on behalf of a child by a parent or a person having guardianship of the child.
- (2) If an application made under section 25 states that it is made on behalf of a child by a parent or another person having guardianship of the child—
  - (a) the application must state the name of the child and the name of the parent or other person; and
  - (b) the child is the applicant for the purposes of division 1A;<sup>30</sup> and
  - (c) section 105<sup>31</sup> does not apply in relation to the application but, if the application is for documents that relate to the personal affairs of the child and that contain matter that would be exempt matter if the application were made by a person (other than the child or the child's agent), an agency or Minister—
    - (i) must not give access to the information unless the agency or the Minister is satisfied of the identity of the child and the parent or other person; and
    - (ii) must ensure, by the adoption of appropriate procedures, that any information intended for the child is received only by the parent or other person.
- (3) If an application is made under section 25 by, or on behalf of a child, then, despite section 44(2),<sup>32</sup> if a document contains information concerning the personal affairs of the child, the agency or Minister may refuse access to all or part of the

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29 Section 25 (How applications for access are made)

30 Division 1A (Fees and charges)

31 Section 105 (Precautions)

32 Section 44 (Matter affecting personal affairs)

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information if the agency or Minister considers access would not be in the best interests of the child.

- (4) If an application is made under section 25 by a child, the agency or Minister, in deciding whether to give the child access to all or part of the information, must consider whether the child has the capacity to—
- (a) understand the information and the context in which it was recorded; and
  - (b) make a mature judgment as to what might be in his or her best interests.
- (5) In this section—

***child*** means an individual who is under 18.

***guardianship*** includes guardianship, whether sole guardianship or otherwise and whether for a particular purpose or otherwise, under a law of the Commonwealth or of a State or Territory.

***parent*** see the *Child Protection Act 1999*, section 11(1) to (4).

*Note—*

*Child Protection Act 1999*, section 11(1) to (4)—

**11 Who is a parent**

- (1) A ***parent*** of a child is the child's mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.

## **Division 3                      Consultation**

### **51            Disclosure that may reasonably be expected to be of substantial concern**

(1) An agency or Minister may give access to a document that contains matter the disclosure of which may reasonably be expected to be of substantial concern to a government, agency or person only if the agency or Minister has taken such steps as are reasonably practicable to obtain the views of the government, agency or person concerned about whether or not the matter is exempt matter.

(2) If—

- (a) the agency or Minister decides, after having sought the views of the government, agency or person concerned, that the matter is not exempt matter; and
- (b) that government, agency or person believes that the matter is exempt matter;

the agency or Minister must—

- (c) give written notice to the government, agency or person concerned of—
  - (i) the decision of the agency or Minister; and
  - (ii) the reasons for the decision; and
  - (iii) the rights of review conferred by this Act in relation to the decision; and
  - (iv) the procedures to be followed in exercising those rights; and
- (d) give written notice to the applicant of the decision; and
- (e) defer giving access to the document until after—
  - (i) the agency or Minister is given written notice by the government, agency or person concerned that the government, agency or person concerned does not intend to make any application for review under this Act; or
  - (ii) if notice is not given under subparagraph (i) and no application for review under this Act is made by



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the end of the review period—the end of the review period; or

- (iii) if an application for review is made by the end of the review period—the application is finally disposed of.

- (3) In this section—

***adult child*** means a child who is 18 or more.

***adult sibling*** means a sibling who is 18 or more.

***eligible family member***, of a deceased person, means—

- (a) a spouse of the deceased person; or
- (b) if a spouse is not reasonably available—an adult child of the deceased person; or
- (c) if a spouse or adult child is not reasonably available—a parent of the deceased person; or
- (d) if a spouse, adult child or parent is not reasonably available—an adult sibling of the deceased person; or
- (e) if a spouse, adult child, parent or adult sibling is not reasonably available and the deceased person was not an Aboriginal person or Torres Strait Islander—the next nearest adult relative of the deceased person who is reasonably available; or
- (f) if a spouse, adult child, parent or adult sibling is not reasonably available and the deceased person was an Aboriginal person or Torres Strait Islander—a person who is an appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged and who is reasonably available.

***person concerned***, in relation to a person who has died, means the deceased person's eligible family member, or, if 2 or more persons qualify as the deceased person's eligible family member, 1 of those persons.

***review period*** means the period within which any application for review under this Act may be made.

- (4) For the definition ***eligible family member***, a person described in the definition is not ***reasonably available*** if—

- (a) a person of that description does not exist; or
- (b) a person of that description can not be reasonably contacted; or
- (c) a person of that description is unable or unwilling to act as the person concerned for this section.

## **Division 4                      Internal review**

### **52                      Internal review**

- (1) A person who is aggrieved by any of the following decisions is entitled to a review of the decision—
  - (a) a decision under this part;
  - (b) a decision that this Act, or a part of this Act, does not apply to an entity—
    - (i) because the entity is not an agency for this Act; or
    - (ii) because of section 11 or 12<sup>33</sup> or another Act;
  - (c) a decision that this Act, or a part of this Act, does not apply to a document because of section 11, 11A, 11B, 11C or 12<sup>34</sup> or another Act;

*Note—*

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

  - (d) a decision of the agency or Minister that the applicant is not entitled to access because of section 11E.<sup>35</sup>
- (2) An application for review of a decision must—
  - (a) be in writing; and
  - (b) state an address to which notices under this Act may be sent to the applicant; and

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33 Section 11 (Act not to apply to certain bodies etc.) or 12 (Application of Act to Information Commissioner)

34 Section 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations) or 11C (Application of Act to coronial documents)

35 Section 11E (Application of Act to offenders)

- (c) be lodged at an office of the agency or the Minister within 28 days after the day on which written notice of the decision was given to the applicant or within the further time the agency's principal officer or the Minister allows (whether before or after the end of the 28 day period).
- (3) A person is not entitled to a review under this section of a decision made—
  - (a) on an application made under this section; or
  - (b) by an agency's principal officer; or
  - (c) by a Minister.
- (4) An application under this section must not be dealt with by—
  - (a) the person who dealt with the original application; or
  - (b) a person who is less senior than that person.
- (5) The reviewer must decide the application as if it were a fresh application under section 25.
- (6) If an agency or Minister does not decide an application and notify the applicant of the decision within 28 days after receiving it, the agency's principal officer or the Minister is taken to have made a decision at the end of the period affirming the original decision.
- (7) A person is aggrieved by a decision only if section 52A(1), (3) or (4) applies.

## **52A Who is aggrieved by a decision for s 52**

- (1) For section 52, a person is aggrieved by a decision if the decision relates to an application made by the person under section 25 and is to the effect that—
  - (a) the agency or Minister refuses, under section 29 or 29B,<sup>36</sup> to deal with the application; or
  - (b) the agency or Minister refuses to give the applicant access to a document; or

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36 Section 29 (Refusal to deal with application—agency's or Minister's functions) or 29B (Refusal to deal with application—previous application for same documents)

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- (c) access to a document is to be given to the applicant subject to deferral; or
- (d) access to a document is to be given to the applicant subject to the deletion of exempt matter or matter an agency or Minister considers is irrelevant matter; or
- (e) an application fee is payable; or
- (f) a processing charge or access charge is payable under a final assessment notice and the applicant considers the charge is wrongly assessed; or

*Note—*

For challenges to a processing charge or access charge payable under a preliminary assessment notice, see schedule 4 (Process for assessment of charges), part 2 (Objection process).

- (g) a contention in an objection notice is rejected.
- (2) For subsection (1)(f), it does not matter whether the processing charge or access charge has already been paid.
  - (3) For section 52, a person, including a government or agency, is aggrieved by a decision if the decision relates to an application by another person under section 25 for access to a document and—
    - (a) the agency or Minister should have taken, but has not taken, the steps that are reasonably practicable to obtain the views of the aggrieved person about whether or not the document contained matter that is exempt matter; or
    - (b) the agency or Minister has obtained the views of the aggrieved person but the decision is not in accordance with the views.
  - (4) For section 52, a person is aggrieved by a decision if—
    - (a) the decision relates to an application by another person under section 25 for access to a document; and

- (b) 2 or more persons, including the aggrieved person, qualify as a deceased person's eligible family member as defined under section 51;<sup>37</sup> and
- (c) the agency or Minister obtained the views of 1 of the persons and that person was of the view that the matter contained in the document was not exempt matter; and
- (d) the agency or Minister did not obtain the views of the aggrieved person and the aggrieved person is of the view that the matter contained in the document is exempt matter.

## **Part 4                      Amendment of information**

### **Division 1                      Application for amendment of information**

#### **53                      Person may apply for amendment of information**

- (1) A person who has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to the person's personal affairs is entitled to apply to the agency or Minister for amendment of any part of the information that the person claims is inaccurate, incomplete, out-of-date or misleading.
- (2) A person who—
  - (a) has had access to a document from an agency or Minister (whether or not under this Act) containing information relating to the personal affairs of a deceased person; and
  - (b) is either—

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<sup>37</sup> Section 51 (Disclosure that may reasonably be expected to be of substantial concern)

- (i) a person who qualifies as a deceased person's eligible family member as defined under section 51; or
- (ii) a person the agency or Minister considers has an appropriate interest in the amendment of the information relating to the personal affairs of the deceased person;

is entitled to apply to the agency or Minister for amendment of any part of the information that the person claims is inaccurate, incomplete, out-of-date or misleading.

#### **54 Form of application for amendment of information**

An application under section 53 must—

- (a) be in writing; and
- (b) state an address to which a notice under section 57<sup>38</sup> may be sent to the applicant; and
- (c) state the information the applicant claims is inaccurate, incomplete, out-of-date or misleading and the document containing the information; and
- (d) state the way in which the applicant claims the information to be inaccurate, incomplete, out-of-date or misleading and the grounds for the applicant's claim; and
- (e) if the applicant claims the information to be inaccurate or misleading—state the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
- (f) if the applicant claims the information to be incomplete or out-of-date—state the other information the applicant claims is necessary to complete the information or to bring it up-to-date.

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38 Section 57 (Time within which agency or Minister must notify applicant)

**54A Transfer of applications**

- (1) An agency to which an application under section 53<sup>39</sup> has been made (the *original agency*) may transfer the application to another agency if—
  - (a) the document to which the application relates is held by the original agency but is more closely related to the functions of the other agency; and
  - (b) the other agency consents to the transfer.
- (2) If the application is transferred, the original agency must—
  - (a) give a copy of the document (whether or not in the form of a written document) to the other agency with the application; and
  - (b) immediately give the applicant written notice of the transfer, stating in the notice the day on which, and the agency to which, the application has been transferred.
- (3) If the application is transferred, the application is taken—
  - (a) to be an application under section 53 made to the other agency; and
  - (b) to have been received by the other agency—
    - (i) on the day on which it is transferred; or
    - (ii) 14 days after the day on which it was received by the original agency;whichever is the earlier.
- (4) If the other agency decides to amend the information to which the application relates, then—
  - (a) the other agency must advise the original agency of the decision and how, under section 55,<sup>40</sup> it proposes to make the amendment; and
  - (b) the original agency must make the same amendment to the information in the document it holds.

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39 Section 53 (Person may apply for amendment of information)

40 Section 55 (Amendment of information by alteration or notation)

- (5) If an application is made to an agency for amendment of information in more than 1 document, this section applies in relation to each of the documents as if separate applications had been made to the agency for amendment of information in each of the documents.
- (6) In this section—  
*agency* includes a Minister.

**54B Refusal to deal with application—agency’s or Minister’s functions**

- (1) An agency or Minister to whom an application is made under section 53 may refuse to deal with the application or, if the agency or Minister is considering 2 or more applications made by the same person, all the applications, if the agency or Minister considers the work involved in dealing with the application or all the applications, would, if carried out—
  - (a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or
  - (b) interfere substantially and unreasonably with the performance by the Minister of the Minister’s functions.
- (2) If the agency or Minister decides to refuse to deal with the application or all the applications—
  - (a) the agency or Minister must give written notice to the applicant of the decision and the reasons for the decision; and
  - (b) the notice must specify—
    - (i) the day on which the decision was made; and
    - (ii) details of any public interest considerations on which the decision was based; and
    - (iii) the name and designation of the officer who made the decision; and



- (c) section 59<sup>41</sup> does not apply in relation to the information the subject of the application.

**54C What an agency or Minister must do before refusing to deal with application under s 54B**

- (1) The agency or Minister may refuse to deal with the application, or all the applications, under section 54B only if—
- (a) the agency or Minister has given the applicant a written notice—
    - (i) stating an intention to refuse to deal with the application or all the applications; and
    - (ii) advising that, for a consultation period, the applicant may consult with a stated officer of the agency or a stated member of the staff of the Minister with a view to making an application or applications in a form that would remove the ground for refusal; and
    - (iii) advising that the consultation period ends 21 days after the day the applicant is given the notice; and
    - (iv) stating the effect of subsections (2), (3), (4), (5), (6) and (7); and
  - (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the officer or member; and
  - (c) the agency or Minister has, as far as is reasonably practicable, provided the applicant with any information that would help the making of an application or applications in a form that would remove the ground for refusal.
- (2) During consultation, the applicant and officer or member may agree on a different period to the period mentioned in section 57<sup>42</sup> for notification of the decision in relation to the application or any of the applications.

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41 Section 59 (Particular notations required to be added)

42 Section 57 (Time within which agency or Minister must notify applicant)

- (3) Following consultation, the applicant may give the officer or member written notice either confirming or altering the application or any of the applications.

*Examples of alterations—*

- an alteration of the documents to which the application relates
  - an alteration of the application to state that the period for notification of the decision in relation to the application is to be the period agreed with the officer or member rather than the period mentioned in section 57
- (4) If the application is altered, section 54B applies in relation to the altered application but the other provisions of this section do not apply to it.
- (5) If the applicant fails to consult after being given notice under subsection (1)(a), the applicant is taken to have withdrawn the application or all of the applications.
- (6) Without limiting subsection (5), the applicant is taken to have failed to consult if, by the end of the consultation period, the applicant has not given the officer or member written notice under subsection (3).
- (7) If the applicant gives the officer or member written notice altering the application to state that the period for notification of the decision in relation to the application is to be the different period agreed under subsection (2), the agreed period is taken to be the period mentioned in section 57.
- (8) Also, the period commencing on the day an applicant is given notice under subsection (1)(a) and ending on the day the applicant gives the agency or Minister written notice confirming or altering the application following consultation does not count as part of the period mentioned in section 57.

#### **54D Refusal to deal with application—previous application for same amendment**

- (1) This section applies if an applicant applies to an agency or Minister for amendment under section 53 of information in 1 or more documents (the *later application*) and has made an earlier application to the same agency or Minister for the same or a similar amendment under section 53 of information in 1 or more of the same documents (the *earlier application*).

- (2) However, this section does not apply if the applicant withdrew the earlier application or the application was taken to be withdrawn under section 54C.<sup>43</sup>
- (3) The agency or Minister may, to the extent the later application relates to the amendment of a document or documents sought under the earlier application, refuse to deal with the later application on a ground mentioned in subsection (4) if—
  - (a) the agency or Minister is satisfied the amendment sought under the later application was the same or similar amendment sought under the earlier application; and
  - (b) the later application has not disclosed any reasonable basis for again seeking amendment of information in the document or documents.
- (4) The grounds are as follows—
  - (a) the agency's or Minister's decision on the earlier application was to refuse to amend on a ground mentioned in section 54E(2);
  - (b) when the later application was made, the agency or Minister had not decided whether to amend the information to which the earlier application relates;
  - (c) the agency's or Minister's decision on the earlier application—
    - (i) is the subject of a review under division 2<sup>44</sup> and the review is not complete; or
    - (ii) has been the subject of a completed review under division 2.

## **54E Discretion to amend information**

- (1) An agency or Minister to whom an application is made under section 53 may decide to amend the information to which the application relates.

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43 Section 54C (What an agency or Minister must do before refusing to deal with application under s 54B)

44 Division 2 (Internal review)

- (2) Without limiting the grounds on which the agency or Minister may refuse to amend the information, the agency or Minister may refuse to amend the information because—
- (a) the agency or Minister is not satisfied—
    - (i) the information is inaccurate, incomplete, out-of-date or misleading; or
    - (ii) the information sought to be amended is information relating to the personal affairs of the applicant or relating to the personal affairs of a deceased person; or
    - (iii) if the information sought to be amended is information relating to the personal affairs of a deceased person, that the applicant is a person entitled to apply for amendment under section 53(2)(b); or
  - (b) the information is not recorded in a functional record.
- (3) In this section—
- functional record*, of an agency or Minister, means a record available for use in the day to day or ordinary performance of the agency's or Minister's functions.

## **55 Amendment of information by alteration or notation**

If an agency or Minister to whom an application is made under section 53 decides to amend the information to which the application relates, the agency or Minister may make the amendment by—

- (a) altering the information; or
- (b) adding an appropriate notation to the information.

## **56 Notation to information**

If an agency or Minister adds a notation to information, the notation must—

- (a) specify the respects in which the information is inaccurate, incomplete, out-of-date or misleading; and

- (b) if the information is claimed to be incomplete or out-of-date—set out such information as is required to complete the information or bring it up-to-date.

**57 Time within which agency or Minister must notify applicant**

- (1) If an application is made to an agency or Minister under section 53, the agency or Minister must take all reasonable steps to enable the applicant to be notified of a decision on the application as soon as practicable after, but in any case not later than 30 days after, the day on which the application is received.

*Note—*

The period of 30 days mentioned in subsection (1) may be affected by section 54C(7).

- (2) If—
  - (a) the period of 30 days mentioned in subsection (1) has ended; and
  - (b) the applicant has not received notice of a decision;  
the agency's principal officer or the Minister is taken to have made, on the last day of the period, a decision refusing to amend the information.

**58 Decision to be made by authorised person and reasons given**

- (1) Section 33 applies to an application made under section 53.
- (2) Section 34(1)(a) and (2)(a), (f), (h) and (i) applies to a decision made under this part refusing to amend information in like way as it applies to a decision refusing to give access to a document.

**59 Particular notations required to be added**

- (1) This section applies if—
  - (a) a person applies to an agency or Minister under section 53 to amend information; and

- (b) the agency or Minister has refused to amend the information under section 54E;<sup>45</sup> and
  - (c) the agency or Minister has not added a notation to the information under section 56.
- (2) The applicant may, whether or not the applicant has applied to the commissioner for review of the decision, by written notice, require the agency or Minister to add to the information a notation—
- (a) stating the way in which the applicant claims the information to be inaccurate, incomplete, out-of-date or misleading; and
  - (b) if the applicant claims the information to be inaccurate or misleading—setting out the amendments the applicant claims are necessary for the information to be accurate or not misleading; and
  - (c) if the applicant claims the information to be incomplete or out-of-date—setting out the information the applicant claims is necessary to complete the information or to bring it up-to-date.
- (3) The agency or Minister must—
- (a) comply with the requirements of a notice under this section; and
  - (b) give the applicant written notice of the nature of the notation; and
  - (c) if the application made under section 53 was transferred to the agency under section 54A, advise the agency to which the application was originally made (the *original agency*) of the notation.
- (4) Subsection (3)(a) does not require the agency or Minister to make a notation in the words provided by the applicant.
- (5) If the original agency is advised of a notation under subsection (3)(c), the original agency must make the same notation to the information in the document it holds.

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45 54E (Discretion to amend information)

- (6) If the agency or Minister decides the information to which the notice relates does not relate to information about which the applicant was entitled to apply to the agency under section 53—
- (a) subsections (2) and (3) do not apply; and
  - (b) the agency or Minister must give written notice to the applicant of the decision and the reasons for the decision; and
  - (c) section 34(2)(a), (g) and (h) applies to the notice.
- (7) If an agency or Minister (the **document holder**) discloses to a person (including an agency or Minister) any information contained in the part of its documents to which a notice under this section relates, the document holder—
- (a) must ensure the person is given, when the information is disclosed, a statement—
    - (i) stating that the person, or eligible family member of the person, to whom the information relates claims that the information is inaccurate, incomplete, out-of-date or misleading; and
    - (ii) setting out particulars of the notation added under this section; and
  - (b) may include in the statement the reason for the agency's refusal to amend the information.

## **Division 2                      Internal review**

### **60                      Internal review**

- (1) A person who is aggrieved by a decision under this part is entitled to a review of the decision.
- (2) An application for review of a decision must—
  - (a) be in writing; and
  - (b) state an address to which notices under this Act may be sent to the applicant; and

- (c) be lodged at an office of the agency or Minister within 28 days after the day on which written notice of the decision was given to the applicant or within the further time the agency's principal officer or the Minister allows (whether before or after the end of that period).
- (3) A person is not entitled to a review under this section of a decision made—
  - (a) on an application made under this section; or
  - (b) by an agency's principal officer; or
  - (c) by a Minister.
- (4) An application under this section must not be dealt with by—
  - (a) the person who dealt with the original application; or
  - (b) a person who is less senior than that person.
- (5) The reviewer must decide the application as if it were a fresh application under section 53.
- (6) If an agency, Minister or delegate of the Minister does not decide an application and notify the applicant of the decision within 28 days after receiving it, the agency's principal officer or the Minister is taken to have made a decision at the end of the period affirming the original decision.
- (7) A person is aggrieved by a decision only if—
  - (a) the decision relates to an application made by a person under section 53 and is to the effect that the agency or a delegate of the Minister refuses to deal with the application or refuses to amend information under the application; or
  - (b) the decision relates to a notice given by a person under section 59 and is to the effect that the agency or a delegate of the Minister considers the information to which the notice relates is not information about which the person was entitled to apply to the agency or Minister under section 53.



## **Part 5 External review of decisions**

### **Division 1 Conduct of review**

#### **72 Procedure on review**

- (1) On a review under this part—
  - (a) the procedure to be followed is, subject to this Act, within the discretion of the commissioner; and
  - (b) proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the commissioner permits; and
  - (c) the commissioner is not bound by the rules of evidence and may inform himself or herself on any matter in any way the commissioner considers appropriate.
- (2) The commissioner may, during a review, give directions as to the procedure to be followed on the review.

#### **73 Applications for review**

- (1) An application for review must—
  - (a) be in writing; and
  - (b) specify an address of the applicant to which notices may be sent under this Act; and
  - (c) give particulars of the decision for review; and
  - (d) be made within 28 days from the day on which written notice of the decision is given to the applicant, or within the longer period the commissioner allows.
- (2) The application may contain particulars of the basis on which the applicant disputes the decision under review.
- (3) A person is not entitled to apply to the commissioner for review of a decision (other than a decision of a Minister or the principal officer of an agency) unless—

- (a) an application has been made (whether by the person or another person) under section 52 or 60 in relation to the decision; and
- (b) the person has been informed of the result of that review or the period of 28 days mentioned in section 52(6) or 60(6) has ended.

#### **74 Commissioner to notify agency or Minister**

Before starting a review of a decision, the commissioner must inform the agency or Minister concerned that the decision is to be reviewed.

#### **75 Preliminary inquiries**

If an application has been made to the commissioner, the commissioner may, for the purpose of determining—

- (a) whether the commissioner has power to review the matter to which the application relates; or
- (b) whether the commissioner may decide not to review the matter;

make inquiries of the applicant or the agency or Minister concerned.

#### **76 Inspection by commissioner of documents from agency or Minister**

- (1) The commissioner may require an agency or Minister to produce a document for inspection for the purpose of enabling the commissioner to decide—
  - (a) whether the document is a document of the agency or an official document of the Minister; or
  - (b) whether the document falls within the terms of an application for access made under section 25; or

*Freedom of Information Act 1992*

- (c) whether the document is excluded from the application of the Act under section 11, 11A, 11B, 11C or 12<sup>46</sup> or another Act; or

*Note—*

Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act—see section 11D.

- (d) whether the document is a document mentioned in section 11E;<sup>47</sup> or
- (e) whether the document is a document to which access may be refused under section 22;<sup>48</sup> or
- (f) whether the document is an exempt document or contains or comprises exempt matter; or
- (g) whether, for the purposes of section 29B,<sup>49</sup> the later application for access to the document has disclosed any reasonable basis for again seeking access to the document; or
- (h) whether an application fee, processing charge or access charge is payable in relation to access to the document.
- (2) The commissioner must do all things necessary to ensure a document produced under subsection (1)—
- (a) is not disclosed to a person other than—
- (i) a member of the staff of the commissioner in the course of performing duties as a member of the staff; or
- (ii) a person who created the document or who provided the document or information in the document to the agency or Minister; or

46 Section 11 (Act not to apply to certain bodies etc.), 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations), 11C (Application of Act to coronial documents) or 12 (Application of Act to Information Commissioner)

47 Section 11E (Application of Act to offenders)

48 Section 22 (Documents to which access may be refused)

49 Section 29B (Refusal to deal with application—previous application for same documents)

- (iii) if a person mentioned in subparagraph (ii) is a participant in the review—the participant’s representative; and
- (b) is returned to the agency or Minister at the end of the review.

## **77 Commissioner may decide not to review**

- (1) The commissioner may decide not to deal with, or not to further deal with, all or part of an application for review if—
  - (a) the commissioner is satisfied the application, or the part of the application, is frivolous, vexatious, misconceived or lacking substance; or
  - (b) the applicant for review fails to comply with a direction given by the commissioner; or
  - (c) the commissioner considers the applicant for review has failed to cooperate in progressing the application, or the part of the application, without reasonable excuse; or
  - (d) the commissioner considers the address the applicant for review stated in the application is no longer an address at which the applicant is contactable and the applicant has not, within a reasonable time, advised the commissioner of a new address of the applicant to which notices may be sent under this Act.
- (2) If the commissioner decides not to deal with, or not to further deal with, all or part of an application for review, the commissioner must, as soon as practicable, inform each of the following persons in writing of the decision and of the reasons for the decision—
  - (a) the applicant for review, unless subsection (1)(d) applies;
  - (b) any other person informed by the commissioner of the proposed review.

## **78 Participants in review**

- (1) The applicant and the agency or Minister concerned are participants in a review.

- (2) Any person affected by the decision the subject of the review (including, if the review concerns matter that is claimed to be exempt matter, a person whose views must be sought under section 51 in relation to the matter) may apply to the commissioner to participate in the review.
- (3) The commissioner may allow such a person to participate in the review in such way as the commissioner directs.

## **79 Applications where decisions delayed**

- (1) This section applies if an agency's principal officer or a Minister is taken to have made a decision (the *original decision*) under section 20(4), 27(5) or 57(2), schedule 4, section 7 or schedule 4, section 9(3)<sup>50</sup> in relation to an application, or a notice served under section 20(1) (the *original application*).
- (2) If an application is made to the commissioner for review of the original decision, the commissioner may—
  - (a) on the application of the agency or Minister concerned, allow further time to the agency or Minister to deal with the original application; and
  - (b) make the decision to allow further time subject to the conditions the commissioner considers appropriate, including a condition that any processing charge that was required to be paid must be reduced or waived.
- (3) If the agency or Minister does not deal with the original application and notify the applicant within the further time, the agency's principal officer or the Minister is taken, for the purpose of enabling an application to be made to the commissioner under section 73, to have made, on the last day of the further time, a decision affirming the original decision.

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<sup>50</sup> Section 20 (Notices to require specification of documents in statements), 27 (How applications are dealt with) or 57 (Time within which agency or Minister must notify applicant), schedule 4 (Process for assessment of charges), section 7 (Deemed decision) or schedule 4, section 9(3) (Concession card given but not accepted)

**80 Mediation**

- (1) The commissioner may, at any time during a review, try to effect a settlement between the participants.
- (2) The commissioner may suspend a review at any time to allow the participants in the review to negotiate a settlement.

**81 Onus**

- (1) On a review by the commissioner, the agency which or Minister who made the decision under review has the onus of establishing that the decision was justified or that the commissioner should give a decision adverse to the applicant.
- (2) However, if the decision under review is a disclosure decision, the participant in the application for review who opposes the disclosure decision has the onus of establishing that a decision not to disclose the document or matter is justified or that the commissioner should give a decision adverse to the person who wishes to obtain access to the document.
- (3) In this section—

*disclosure decision* means—

- (a) a decision to disclose a document or matter contrary to the views of a person obtained under section 51;<sup>51</sup> or
- (b) a decision to disclose a document or matter if the agency or Minister should have taken, but has not taken, steps to obtain the views of a person under section 51.

**82 Requirement to provide better reasons**

If—

- (a) an application under section 73 is made for review of a decision of an agency or a Minister; and
- (b) the agency or Minister was required to provide a statement to the applicant of the reasons for the decision; and

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<sup>51</sup> Section 51 (Disclosure that may reasonably be expected to be of substantial concern)

- (c) the commissioner considers that the statement is not adequate;

the commissioner may require the agency or Minister to provide to the applicant and the commissioner an additional statement, as soon as practicable, but in any case within 28 days, containing further and better particulars in relation to the matters set out in the first statement.

### **83 Conduct of reviews**

- (1) Subject to subsection (2), if, during a review, the commissioner proposes to—
- (a) allow a participant to make oral submissions; or
  - (b) take evidence on oath or affirmation;
- that part of the review is to be conducted in public unless the commissioner otherwise determines.
- (2) The commissioner may, for the purposes of a review, obtain information from such persons, and make such inquiries, as the commissioner considers appropriate.
- (3) In conducting a review, the commissioner must—
- (a) adopt procedures that are fair, having regard to the obligations of the commissioner under this Act; and
  - (b) ensure that each participant has an opportunity to present the participant's views to the commissioner;
- but, subject to paragraph (a), it is not necessary for a participant to be given an opportunity to appear before the commissioner.
- (4) If the commissioner gives a participant an opportunity to appear before the commissioner, the participant may, with the approval of the commissioner, be represented by another person.
- (5) If—
- (a) the commissioner has decided not to notify a person of the review; and

- (b) it later becomes apparent to the commissioner that documents in which the person has an interest are likely to be released;

the commissioner must take reasonable steps to notify the person of the likely release if the release may reasonably be expected to be of substantial concern to the person.

## **84 Review of Minister's certificates**

- (1) If a certificate has been given in respect of matter under section 36, 37, 42 or 42A, the commissioner may, on the application of an applicant for review, consider the grounds on which the certificate was given.
- (2) If, after considering the matter, the commissioner is satisfied that there were no reasonable grounds for the issue of the certificate, the commissioner must—
  - (a) make a written decision to that effect; and
  - (b) include in the decision the reasons for the decision.
- (3) A certificate the subject of a decision under subsection (2) ceases to have effect at the end of 28 days after the decision was made unless, before that time, the Minister notifies the commissioner in writing that the certificate is confirmed.
- (4) The Minister must cause a copy of a notice given under subsection (3) to be—
  - (a) tabled in the Legislative Assembly within 5 sitting days after it was given; and
  - (b) given to the applicant.
- (5) A notice under subsection (3) must specify the reasons for the decision to confirm the certificate.
- (6) If the Minister withdraws a certificate the subject of a decision under subsection (2) before the end of the period of 28 days mentioned in subsection (3), the Minister must, as soon as practicable, notify the commissioner and each participant.



**85 Power to obtain information and documents and compel attendance**

- (1) If the commissioner has reason to believe that a person has information or a document relevant to a review under this division, the commissioner may give to the person a written notice requiring the person—
  - (a) to give the information to the commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
  - (b) to produce the document to the commissioner.
- (2) The notice must state—
  - (a) the place at which the information or document is to be given or produced to the commissioner; and
  - (b) a reasonable time at which, or a reasonable period within which, the information or document is to be given or produced.
- (3) If the commissioner has reason to believe that a person has information relevant to a review under this division, the commissioner may give to the person a written notice requiring the person to attend before the commissioner at a reasonable time and place specified in the notice to answer questions relevant to the review.

**86 Power to examine witnesses**

- (1) The commissioner may administer an oath or affirmation to a person required under section 85 to attend before the commissioner and may examine such a person on oath or affirmation.
- (2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

**86A False or misleading information**

- (1) A person must not give information to the commissioner, or a member of the commissioner's staff, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to information given in a document, if the person when giving the document—
  - (a) informs the commissioner or member of the commissioner's staff, to the best of the person's ability, how the information is false or misleading; and
  - (b) gives the correct information to the commissioner or member of the commissioner's staff if the person has, or can reasonably obtain, the correct information.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state that the information was 'false or misleading', without specifying whether it was false or whether it was misleading.

**87 Commissioner to ensure non-disclosure of particular matter**

- (1) On a review, the commissioner may give the directions the commissioner considers necessary to avoid the disclosure to an access participant or an access participant's representative of—
  - (a) matter that is claimed to be exempt matter; or
  - (b) information that is claimed to be information of the kind mentioned in section 35.
- (2) The commissioner may receive evidence, or hear argument, in the absence of an access participant or an access participant's representative if it is necessary to do so to prevent disclosure to that person of matter or information of that kind.
- (3) The commissioner must not, in a decision on a review or in reasons for a decision on review, include matter or information of a kind mentioned in subsection (1).

(4) In this section—

*access participant* means a participant other than—

- (a) the agency or Minister who made the decision under review; or
- (b) a participant who created the document concerned or who provided the document concerned to the agency or Minister who made the decision under review.

### **87A Exception for successful challenge of s 35 notice**

- (1) This section applies if an agency or Minister gives a notice under section 35(2) and the commissioner is satisfied that the document concerned does not include exempt matter under section 36, 37, 42 or 42A.
- (2) Section 87(3) does not apply.
- (3) Section 89 applies except that the commissioner must—
  - (a) first give a copy of the decision only to the agency or Minister; and
  - (b) give a copy of the decision to each other participant only if, at the end of 28 days after the decision is given to the agency or Minister, the commissioner has not been notified that the agency or Minister has applied for a statutory order of review under the *Judicial Review Act 1991* in relation to the commissioner's decision (*judicial review*).
- (4) Further, if the commissioner directs that access to the document is to be granted, the agency or Minister must comply with the direction only if, at the end of 28 days after the decision is given to the agency or Minister, the agency or Minister has not applied for judicial review.

### **88 Powers of commissioner on review**

- (1) In the conduct of a review, the commissioner has, in addition to any other power, power to—
  - (a) review any decision that has been made by an agency or Minister in relation to the application concerned; and

- (b) decide any matter in relation to the application that could, under this Act, have been decided by an agency or Minister, or prescribed person under schedule 4, section 10.<sup>52</sup>
- (2) In the conduct of a review of a decision mentioned in section 101C(1)(c), the commissioner also has, in addition to any other power, power to require the agency or Minister concerned to conduct further searches for a document.
- (3) If it is established that a document is an exempt document, the commissioner does not have power to direct that access to the document is to be granted.
- (4) Any decision of the commissioner under this section has the same effect as a decision of the agency, Minister or prescribed person.
- (5) In this section—  
*conduct further searches* for a document includes make inquiries to locate the document.

## **89 Decisions of commissioner**

- (1) The commissioner, after conducting a review of a decision (other than a review under section 84), must make a written decision—
  - (a) affirming the decision; or
  - (b) varying the decision; or
  - (c) setting aside the decision and making a decision in substitution for the decision.
- (2) The commissioner must include in the decision the reasons for the decision.
- (3) The commissioner must give a copy of the decision to each participant.
- (4) If—
  - (a) a document is to be released because of the review; and

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<sup>52</sup> Schedule 4 (Process for assessment of charges), section 10 (Financial hardship claim by non-profit organisation)

- (b) the commissioner has notified a person under section 83(5) and the person did not become a participant in the review;

the commissioner must take reasonable steps to notify the person of the release.

- (5) The commissioner may arrange to have decisions published.

### **89A Correction of mistakes in decisions**

- (1) This section applies if the commissioner considers—
  - (a) there is an obvious error in a written decision of the commissioner; and
  - (b) the error resulted from an accidental slip or omission.
- (2) The commissioner, on application by a party or on the commissioner's own initiative, may at any time correct the error.

## **Division 2 Miscellaneous**

### **90 Delegation**

The commissioner may delegate to a member of the commissioner's staff all or any of the commissioner's powers under this Act, other than the power to compel the production of matter that is the subject of a certificate under section 36, 37, 42 or 42A.

### **91 Protection of commissioner etc. from personal liability**

- (1) The commissioner, or a member of the commissioner's staff, incurs no civil liability for an act or omission done or omitted to be done, honestly and without negligence under, or for the purposes of, this Act.
- (2) A liability that would, but for this section, attach to the commissioner or a member of the commissioner's staff attaches to the State.

**92 Restrictions under other laws not applicable**

- (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to agencies or Ministers, whether imposed under an enactment or a rule of law, applies to the disclosure of information to the commissioner for the purposes of a review under this part.
- (2) Legal professional privilege does not apply to the production of documents or the giving of evidence by a member of an agency or a Minister for the purposes of a review under this part.
- (3) Subject to subsections (1) and (2), every participant in a review has the same privileges in relation to the giving of evidence and producing documents and things that the person would have as a witness in a proceeding before a court.

**93 Secrecy**

If a person who is or has been the commissioner or a member of the staff of the commissioner, otherwise than for the purposes of this Act or a proceeding arising under this Act, discloses any information that the person obtained in the course of the performance of functions under this Act or takes advantage of that information to benefit himself or herself or another person, the person commits an offence.

Maximum penalty—100 penalty units.

**94 Failure to produce documents or attend proceedings**

A person given notice under section 85 to—

- (a) give information; or
- (b) produce a document; or
- (c) attend before the commissioner;

must not, without reasonable excuse, fail to do so.

Maximum penalty—100 penalty units.

**95 Costs of review**

The costs incurred by a participant to a review are payable by the participant.

**96 Disciplinary action**

If the commissioner, at the completion of a review, is of the opinion that—

- (a) there is evidence that an agency's officer has committed a breach of duty or misconduct in the administration of this Act; and
- (b) the evidence is, in all the circumstances, of sufficient force to justify doing so;

the commissioner must bring the evidence to the notice of—

- (c) if the person is the principal officer of an agency—the responsible Minister of the agency; or
- (d) in any other case—the principal officer of the agency.

**96A Vexatious applicants**

- (1) The commissioner may declare in writing that a person is a vexatious applicant.
- (2) The commissioner may make the declaration on the commissioner's own initiative or on the application of 1 or more agencies.
- (3) The commissioner may make a declaration only if the commissioner is satisfied that—
  - (a) the person has made repeated applications under this Act in relation to the agency or agencies; and
  - (b) the repeated applications involve an abuse of the right of access, amendment or review under this Act.
- (4) For subsection (3)(b), repeated applications involve an abuse of the right of access, amendment or review if, for example, the applications were made for the purpose, or have had the effect, of—

- (a) harassing or intimidating an individual or an employee or employees of the agency or agencies; or
  - (b) unreasonably interfering with the operations of the agency or agencies.
- (5) The commissioner must not make a declaration in relation to a person without hearing the person and giving the person an opportunity of being heard.
  - (6) A declaration has effect subject to the terms and conditions, if any, stated in the declaration.
  - (7) Without limiting the conditions that may be stated, a declaration may include a condition that the vexatious applicant may make an application for access under section 25, an application for amendment under part 4 or an application for review under section 52, 60 or 73 only with the written permission of the commissioner.
  - (8) In this section—  
*agency* includes a Minister.

### **96B Declaration may be varied or revoked**

- (1) The commissioner may vary or revoke a declaration made under section 96A.
- (2) The commissioner may vary or revoke the declaration on the commissioner's own initiative or on the application of the person subject to the declaration.

### **97 Reference of questions of law to Supreme Court**

- (1) The commissioner may, at the request of a participant in the review or on the commissioner's own initiative, refer a question of law arising on a review to the Supreme Court for decision.
- (2) The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section.
- (3) If a question of law is referred to the Supreme Court under this section, the commissioner must not—



- (a) make a decision on the review to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a decision, that is inconsistent with the Supreme Court's opinion on the question.

## 98 Costs in proceedings

If a proceeding arising out of the performance of the functions of the commissioner is instituted by the State, the reasonable costs of a party to the proceeding are to be paid by the State.

## 99 Commissioner may appear in proceedings

The commissioner is entitled to appear and be heard in a proceeding arising out of the performance of the functions of the commissioner.

## 99A Third party proceedings

- (1) The commissioner or a member of the commissioner's staff can not be compelled—
  - (a) to produce an FOI document in third party legal proceedings; or
  - (b) to disclose FOI information in third party legal proceedings.
- (2) In this section—

***FOI document*** means a document received, or brought into existence, by the commissioner or member in performing functions under this Act.

***FOI information*** means information that the commissioner or member obtained while performing functions under this Act.

***third party legal proceedings*** means a legal proceeding other than—

- (a) a legal proceeding started by the commissioner; or
- (b) a legal proceeding started against the commissioner or member arising out of the performance of functions under this Act.

**100 Intervention by Attorney-General**

- (1) The Attorney-General may, on behalf of the State, intervene in a proceeding before a court arising out of the performance of the functions of the commissioner under this Act.
- (2) If the Attorney-General intervenes—
  - (a) the court may make such order as to costs against the State as the court considers appropriate; and
  - (b) the Attorney-General becomes a party to the proceeding.

**101 Reports of commissioner**

- (1) The commissioner may make a report to the Speaker on matters relating to a particular review.
- (2) The commissioner must, as soon as practicable after the end of each financial year, submit to the Speaker and parliamentary committee a report of the operations of the commissioner during that year.
- (3) Without limiting subsection (2), a report under subsection (2) must include, in relation to the financial year to which it relates—
  - (a) the number of applications for review to the commissioner under section 73; and
  - (b) in relation to each application that results in a decision under section 89—
    - (i) the decision of the commissioner; and
    - (ii) if the decision in relation to which the application was made was a decision refusing access to exempt matter—the provision of this Act under which the matter was classified as exempt matter.
- (4) The parliamentary committee may require the commissioner to prepare and submit to the committee a report on a particular aspect of the performance of the commissioner's functions.
- (5) If a report of the commissioner is submitted to the Speaker or the parliamentary committee, the Speaker or the chairperson of the committee must cause the report to be tabled in the

Legislative Assembly on the next sitting day after it is submitted.

## **Part 5A                      Office of the Information Commissioner**

### **Division 1                      General**

#### **101A The Information Commissioner and Office**

- (1) There is to be an Information Commissioner.
- (2) The office called the Office of the Information Commissioner is established.
- (3) The office consists of the commissioner and the staff of the office.

#### **101B Office is a statutory body**

- (1) The office is a statutory body for the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the office's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

#### **101C Functions of commissioner**

- (1) The functions of the commissioner are to investigate and review decisions of agencies and Ministers of the following kinds—
  - (a) a decision under section 20 as to whether a person's opinion is correct and a decision under section 20 not to publish statements of affairs or as to whether a statement of affairs complies with part 2;

- (b) a decision under section 29, 29B or 54B<sup>53</sup> refusing to deal with an application;
- (c) a decision refusing to grant access to documents in accordance with an application under section 25;
- (d) a decision giving access to documents subject to the deletion of exempt matter or matter an agency or Minister considers is irrelevant matter;
- (e) a decision giving access to a document of a kind applied for by the applicant but not to all documents of the kind applied for by the applicant;
- (f) a decision giving access to documents in a form different to the form applied for by the applicant, unless access in the form applied for would involve an infringement of the copyright of a person other than the State;
- (g) a decision deferring providing access to documents;
- (h) a decision about whether an application fee is payable;
- (i) a decision that a processing charge or access charge is payable under a final assessment notice if—
  - (i) the applicant considers that the charge is wrongly assessed; or
  - (ii) the applicant considers that the charge should be waived because the applicant is in financial hardship and an objection notice has been given in which the applicant contended the charge should be waived because the applicant is in financial hardship;
- (j) a decision, in relation to an objection notice, that—
  - (i) the original charge was wrongly assessed and should be reduced on a proper assessment; or
  - (ii) a contention in the objection notice should be rejected;

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53 Section 29 (Refusal to deal with application—agency’s or Minister’s functions), 29B (Refusal to deal with application—previous application for same documents) or 54B (Refusal to deal with application—agency’s or Minister’s functions)

*Freedom of Information Act 1992*

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- (k) a decision—
  - (i) to disclose documents contrary to the views of a government, agency or person obtained under section 51; or
  - (ii) to disclose documents if an agency or Minister should have taken, but has not taken, steps to obtain the views of a government, agency or person under section 51;
- (l) a decision not to amend information in accordance with an application under section 53;
- (m) a decision mentioned in section 59(6);
- (n) a decision that this Act, or a part of this Act, does not apply to an entity—
  - (i) because the entity is not an agency for this Act; or
  - (ii) because of section 11 or 12<sup>54</sup> or another Act;
- (o) a decision that this Act, or a part of this Act, does not apply to a document because of section 11, 11A, 11B, 11C or 12<sup>55</sup> or another Act;
- (p) a decision that a person is not entitled to access to a document because of section 11E.<sup>56</sup>
- (2) For subsection (1)(i), it does not matter whether the processing charge or access charge has already been paid.
- (3) The functions of the commissioner also include—
  - (a) investigating and reviewing the grounds for a decision to issue a certificate under section 36, 37, 42 or 42A; and
  - (b) investigating and reviewing whether, in relation to a decision mentioned in subsection (1)(c) or (e), agencies and Ministers have taken reasonable steps to identify and locate documents applied for by applicants; and

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54 Section 11 (Act not to apply to certain bodies etc.) or 12 (Application of Act to Information Commissioner)

55 Section 11A (Application of Act to GOCs), 11B (Application of Act to corporatised corporations) or 11C (Application of Act to coronial documents)

56 Section 11E (Application of Act to offenders)

- (c) making declarations under section 96A;<sup>57</sup> and
  - (d) providing information and help to agencies and members of the public on matters relevant to part 5 or 5A<sup>58</sup> of this Act.
- (4) The commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commissioner's functions.

### **101D Control of the office**

The commissioner controls the office.

### **101E Commissioner not subject to direction**

- (1) The commissioner is not subject to direction by any person about—
- (a) the way in which the commissioner's powers in relation to investigations and reviews are to be exercised; or
  - (b) the priority to be given to investigations and reviews.
- (2) Subsection (1) has effect despite the *Public Service Act 1996*.

### **101F Budget and performance**

- (1) For each financial year, the commissioner must develop, adopt and submit to the Minister a budget for the office not later than the day the Minister directs.
- (2) A budget has no effect until approved by the Minister.
- (3) During a financial year the commissioner may develop, adopt and submit to the Minister amendments to the office's budget.
- (4) An amendment has no effect until approved by the Minister.
- (5) The office must comply with its budget.

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57 Section 96A (Vexatious applicants)

58 Part 5 (External review of decisions) or 5A (Office of the Information Commissioner)

- (6) This section does not require the commissioner to give the Minister any details that would, if given, prejudice a current investigation or review by the commissioner.

## **Division 2 Information Commissioner**

### **101G Appointment**

- (1) The commissioner is appointed by the Governor in Council.
- (2) The commissioner is appointed under this Act and not under the *Public Service Act 1996*.

### **101H Procedure before appointment**

- (1) A person may be appointed as commissioner only if—
- (a) the Minister has placed press advertisements nationally calling for applications from suitably qualified persons to be considered for appointment; and
  - (b) the Minister has consulted with the parliamentary committee about—
    - (i) the process of selection for appointment; and
    - (ii) the appointment of the person as commissioner.
- (2) Subsection (1)(a) and (b)(i) does not apply to the reappointment of a person as commissioner.

### **101I Term of appointment**

The commissioner holds office for the term, of not more than 3 years, stated in the instrument of appointment.

### **101J Remuneration and conditions**

- (1) The commissioner is to be paid remuneration and other allowances decided by the Governor in Council.
- (2) The remuneration paid to the commissioner must not be reduced during the commissioner's term of office without the commissioner's written consent.

- (3) In relation to matters not provided for by this Act, the commissioner holds office on the terms and conditions decided by the Governor in Council.

### **101K Leave of absence**

The Minister may grant leave to the commissioner in accordance with entitlements available to the commissioner under the commissioner's conditions of office.

### **101L Preservation of rights if public service officer appointed**

- (1) A public service officer who is appointed to the office of commissioner or who is appointed to act in the office is entitled to retain all existing and accruing rights as if service in the office were a continuation of service as a public service officer.
- (2) If the person stops holding the office for a reason other than misconduct, the person is entitled to be employed as a public service officer.
- (3) The person is to be employed on the classification level and remuneration that the public service commissioner or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had continued in employment as a public service officer.

### **101M Oath before performing duties**

- (1) Before performing the duties of office, the commissioner must make an oath or affirmation to the effect that he or she will faithfully and impartially perform the duties of the office.
- (2) The oath must be administered by the Speaker.

### **101N Restriction on outside employment**

- (1) The commissioner must not, without the Minister's prior approval in each particular case—
  - (a) hold any office of profit other than that of commissioner; or



- (b) engage in any remunerative employment or undertaking outside the duties of the office.
- (2) Contravention of subsection (1) is misconduct under section 101Q(a).

### **101O Resignation**

- (1) The commissioner may resign by signed notice given to the Minister.
- (2) As soon as practicable after the notice is given to the Minister, the Minister must—
  - (a) give the notice to the Governor for information; and
  - (b) give a copy of the notice to—
    - (i) the Speaker of the Legislative Assembly; and
    - (ii) the chairperson of the parliamentary committee.
- (3) Failure to comply with subsection (2) does not affect the effectiveness of the resignation.

### **101P Acting commissioner**

- (1) The Governor in Council may appoint a person to act as commissioner—
  - (a) during a vacancy in the office; or
  - (b) during any period, or during all periods, when the commissioner is absent from duty or from Australia or is, for another reason, unable to perform the duties of the office.
- (2) The acting commissioner is appointed under this Act and not the *Public Service Act 1996*.
- (3) Before performing the duties of office, the acting commissioner must make an oath or affirmation to the effect that he or she will faithfully and impartially perform the duties of the office.
- (4) The oath must be administered by the Speaker.

- (5) The *Acts Interpretation Act 1954*, section 25(1)(b)(iv) and (v)<sup>59</sup> does not apply to the office of acting commissioner.

### **Division 3                      Commissioner may be removed or suspended from office**

#### **101Q    Grounds for removal or suspension from office**

The following are grounds for removal or suspension of the commissioner from office—

- (a) proved incapacity, incompetence or misconduct;
- (b) conviction of an indictable offence.

#### **101R    Removal of commissioner on address**

- (1) The Governor may, on an address from the Assembly, remove the commissioner from office.
- (2) The motion for the address may be moved only by the Premier.
- (3) The Premier may move the motion only if—
  - (a) the Premier has given the commissioner a statement setting out the reasons for the motion; and
  - (b) the statement and any written response by the commissioner have been tabled in the Assembly; and
  - (c) the Premier has consulted with the parliamentary committee about the motion; and
  - (d) agreement to the motion has been obtained from—
    - (i) all members of the parliamentary committee; or
    - (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.

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<sup>59</sup> *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

**101S Suspension of commissioner on address**

- (1) The Governor may, on an address from the Assembly, suspend the commissioner from office.
- (2) The motion for the address may be moved only by the Premier.
- (3) The Premier may move the motion only if—
  - (a) the Premier has given the commissioner a statement setting out the reasons for the motion; and
  - (b) the statement and any written response by the commissioner have been tabled in the Assembly; and
  - (c) the Premier has consulted with the parliamentary committee about the motion; and
  - (d) agreement to the motion has been obtained from—
    - (i) all members of the parliamentary committee; or
    - (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.
- (4) The commissioner is entitled to be paid salary and allowances for the period of the suspension only if—
  - (a) the Assembly resolves that salary and allowances be paid for the period; or
  - (b) the Assembly does not pass a resolution under paragraph (a) and the Governor in Council approves the payment of salary and allowances for the period.

**101T Suspension of commissioner if Assembly not sitting**

- (1) If the Assembly is not sitting, the Governor in Council may suspend the commissioner from office.
- (2) The Governor in Council may suspend the commissioner only if—
  - (a) the Premier has given the commissioner a statement setting out the reasons for the suspension; and

- (b) the Premier has considered any response by the commissioner to the statement.
- (3) The Premier must table the statement and any written response by the commissioner in the Assembly within 3 sitting days after the day the suspension begins.
- (4) The suspension stops having effect—
  - (a) at the end of 6 sitting days after the day the suspension begins; or
  - (b) if the commissioner is earlier suspended or removed from office on an address from the Assembly—at the earlier time.
- (5) If the suspension stops having effect under subsection (4)(a), the commissioner is entitled to be paid salary and allowances for the period of the suspension.
- (6) Except as provided in subsection (5), the commissioner is entitled to be paid salary and allowances for the period of the suspension only if—
  - (a) the Assembly resolves that salary and allowances be paid for the period; or
  - (b) the Assembly does not pass a resolution under paragraph (a) and the Governor in Council approves the payment of salary and allowances for the period.

### **101U Acts Interpretation Act 1954**

The *Acts Interpretation Act 1954*, section 25(1)(b)(i) to (iii)<sup>60</sup> does not apply to the removal or suspension of the commissioner.

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<sup>60</sup> *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

## **Division 4                      Staff of the office**

### **101V    Staff employed under Public Service Act 1996**

The staff of the office are to be employed under the *Public Service Act 1996*.

### **101W    Staff subject only to direction of commissioner**

- (1) The staff of the office are not subject to direction by any person, other than the commissioner or a person authorised by the commissioner, about—
  - (a) the way in which the commissioner's powers in relation to investigations and reviews are to be exercised; or
  - (b) the priority to be given to investigations and reviews.
- (2) Subsection (1) has effect despite the *Public Service Act 1996*.

## **Part 6                              Miscellaneous**

### **102    Protection against actions for defamation or breach of confidence**

- (1) If access has been given to a document and—
  - (a) the access was required or permitted by this Act to be given; or
  - (b) the access was authorised by a Minister, or by an officer having authority under section 33 to make decisions in relation to applications, in the genuine belief that the access was required or permitted to be given by this Act;then—
  - (c) no action for defamation or breach of confidence lies against the State, an agency, a Minister or an officer because of the authorising or giving of the access; and
  - (d) no action for defamation or breach of confidence in relation to any publication involved in, or resulting

from, the giving of the access lies against the author of the document or another person because of the author or another person having supplied the document to an agency or Minister.

- (2) The giving of access to a document (including an exempt document) because of an application must not be taken for the purposes of the law relating to defamation or breach of confidence to constitute an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

### **103 Protection in respect of offences**

If access has been given to a document and—

- (a) the access was required or permitted by this Act to be given; or
- (b) the access was authorised by a Minister, or by an officer having authority under section 33 to make decisions in relation to applications, in the genuine belief that the access was required or permitted to be given by this Act;

neither the person authorising the access nor any other person concerned in the giving of the access commits a criminal offence merely because of authorising or giving of the access.

### **104 Protection of agency etc. from personal liability**

- (1) Neither—

- (a) an agency, an agency's principal officer or a Minister; nor
- (b) a person acting under the direction of an agency, an agency's principal officer or a Minister;

incurs civil liability for an act or omission done or omitted to be done honestly and without negligence under, or for the purposes of, this Act.

- (2) A liability that would, but for this section, attach to a body or person mentioned in subsection (1) attaches instead to the State.

**105 Precautions**

If an application is made under section 25 for documents that relate to the personal affairs of a person, and the documents contain matter that would be exempt matter if the application was made by a person other than the first person or the person's agent, an agency or Minister—

- (a) must not give access to the information unless the agency or the Minister is satisfied of the identity of the applicant; and
- (b) must ensure, by the adoption of appropriate procedures, that any information intended for the applicant is received—
  - (i) if the application is made by the applicant's agent—only by the applicant or the agent; or
  - (ii) in any other case—only by the applicant; and
- (c) must ensure that, if the application is made by the applicant's agent, the agent has the written authority of the applicant to obtain the information or is otherwise properly authorised by the applicant to obtain the information.

**106 Offence of unlawful access**

A person who, in order to gain access to a document containing matter relating to the personal affairs of another person, knowingly deceives or misleads a person exercising powers under this Act, commits an offence.

Maximum penalty—100 penalty units.

**107 Application of Ombudsman Act**

The *Ombudsman Act 2001* does not apply to—

- (a) the Information Commissioner; or
- (b) decisions that could be the subject of review by the Information Commissioner under this Act.

**108 Report to Legislative Assembly by agencies and Ministers**

- (1) The Minister administering this Act shall, as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year and cause a copy of the report to be tabled in the Legislative Assembly.
- (2) The report is to include details of the difficulties (if any) encountered during the year by agencies and Ministers in the administration of this Act.
- (3) Each responsible Minister must, in relation to the agencies within the Minister's portfolio and in relation to the Minister's official documents, comply with any prescribed requirements concerning that information and the keeping of records for the purposes of this section.
- (4) A report under subsection (1) must include, in relation to the financial year to which it relates, particulars of the operations of each agency and Minister under this Act including, in relation to each agency and Minister—
  - (a) the number of applications for access under this Act made to each agency and to each Minister; and
  - (b) the number of preliminary assessment notices and the number of final assessment notices given by each agency and by each Minister; and
  - (c) the number of decisions not to give access to a document, the provisions of this Act under which matter was classified as exempt and the number of times each provision was invoked; and
  - (d) the number of applications under section 52 for review of a decision, and, if the officer conducting the review confirmed, in whole or part, a decision classifying matter as exempt matter, the provision of this Act under which that decision was made; and
  - (e) the number of applications for amendment of information under this Act made to each agency and to each Minister; and
  - (f) the number of applications under section 60 for review of a decision; and



- (g) the number of notices served on the principal officer of the agency under section 20(1) and the number of decisions by the principal officer that were adverse to the person's claim; and
  - (h) particulars of any disciplinary action taken against an officer in relation to the administration of this Act; and
  - (i) the amount of fees and charges collected by the agency or Minister; and
  - (j) any other facts indicating an effort by the agency or Minister to implement and administer this Act.
- (5) It is sufficient compliance with subsection (1) if the department's annual report for a financial year includes a report about the matters mentioned in this section.

### **108A Strategic review of commissioner**

- (1) Strategic reviews of the commissioner are to be conducted under this section and sections 108AA and 108AB.
- (2) A strategic review is to be conducted at least every 5 years, counting from when the report (the *earlier report*) for the most recent earlier strategic review was given to the Minister and the commissioner under section 108AB(4),<sup>61</sup> up to when the reviewer is appointed under subsection (4) to undertake the latest review.
- (3) However, if the parliamentary committee reported to the Legislative Assembly about the earlier report, and the committee's report made recommendations to which a Minister was required to respond under the *Parliament of Queensland Act 2001*, section 107<sup>62</sup> the 5 years is counted from when the Minister's response was tabled under that section.
- (4) Each strategic review is to be undertaken by an appropriately qualified person (*reviewer*), appointed by the Governor in Council, who is to give a report on the review.

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61 Section 108AB (Report of strategic review)

62 *Parliament of Queensland Act 2001*, section 107 (Ministerial response to committee report)

- (5) The terms of reference for a strategic review are to be decided by the Governor in Council.
- (6) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the commissioner about—
  - (a) the appointment of the reviewer; and
  - (b) the terms of reference for the review.
- (7) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.
- (8) In this section—

**strategic review** includes—

  - (a) a review of the commissioner’s functions; and
  - (b) a review of the commissioner’s performance of the functions to assess whether they are being performed economically, effectively and efficiently.

### **108AA Conduct of strategic review**

In conducting a strategic review—

- (a) the reviewer has the powers an authorised auditor has under the *Financial Administration and Audit Act 1977* for an audit of an entity; and
- (b) that Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

### **108AB Report of strategic review**

- (1) The reviewer must give a copy of a proposed report on the strategic review to the Minister and the commissioner.
- (2) The commissioner may, within 21 days after receiving the proposed report, give the reviewer written comments on anything in the proposed report.
- (3) If the commissioner comments under subsection (2), the reviewer must—

- (a) if the reviewer and commissioner can agree about how to dispose of a comment—incorporate into the report any agreed amendment necessary to dispose of the comment; or
  - (b) if the reviewer and commissioner can not agree about how to dispose of a comment—include the comment, in full, in the report.
- (4) After complying with subsections (1) and (3), the reviewer must give the report (*review report*) to the Minister and the commissioner.
  - (5) The review report must be the same as the proposed report given to them under subsection (1), apart from the changes made under subsection (3).
  - (6) The Minister must table the review report in the Legislative Assembly within 3 sitting days after the Minister receives the report.
  - (7) For the *Parliament of Queensland Act 2001*, section 84(2)<sup>63</sup> the report is referred to the parliamentary committee.

### **108C Functions of parliamentary committee**

The parliamentary committee has the following functions under this Act—

- (a) to monitor and review the performance by the commissioner of the commissioner's functions under this Act;
- (b) to report to the Legislative Assembly on any matter concerning the commissioner, the commissioner's functions or the performance of the commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention;
- (c) to examine each annual report tabled in the Legislative Assembly under this Act and, if appropriate, to comment on any aspect of the report;

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63 *Parliament of Queensland Act 2001*, section 84 (Role of statutory committees)

- (d) to report to the Legislative Assembly any changes to the functions, structures and procedures of the office of information commissioner the committee considers desirable for the more effective operation of this Act;
- (e) the other functions conferred on the parliamentary committee by this Act.

*Note—*

The parliamentary committee also has functions under other Acts, for example, the *Parliament of Queensland Act 2001*, section 86 (Administrative review reform).

### **109 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about the following—
  - (a) an application fee for an application for access to a document that does not concern the applicant's personal affairs;
  - (b) a processing charge and access charge for access to a document that does not concern the applicant's personal affairs;
  - (c) waiver of charges for up to 2 hours of charges consisting of processing charges and access charges;
  - (d) deposits required on account of charges;
  - (e) the officers who may give decisions on behalf of an agency.
- (3) However, a regulation providing for the making of charges must not allow the amount or rate of charge to vary according to whether the document is a document of 1 agency or of an agency included in 1 class of agency or is a document of another agency or of an agency included in another class of agency.

## **Part 7                      Transitional provisions**

### **Division 1                      Provision for Ombudsman Act 2001**

#### **110      Strategic review**

(1) A report of a strategic review under former section 108A is taken to be an earlier report of a strategic review for section 108A(2).

(2) In this section—

*former section 72* means section 108A of this Act as in force immediately before the commencement of this section.

*new section 72* means section 108A of this Act as inserted by the *Ombudsman Act 2001*.

### **Division 2                      Provision for Terrorism (Community Safety) Amendment Act 2004**

#### **111      Matter relating to national or State security**

Section 42A applies in relation to an application under this Act for access to a document, or for the review of a decision under this Act about access to a document, whether the application was made before or after the commencement of that section.

### **Division 3                      Provision for Transport Infrastructure Amendment Act 2004**

#### **112      Application for access to particular documents**

(1) This section applies to any document obtained, received, or brought into existence, by a rail safety officer in relation to the derailment before the commencement of this section, whether or not the rail safety officer was carrying out an investigation at any relevant time.

- (2) The document is declared to be, and to have always been, a document consisting entirely of exempt matter to which section 48 applies as if its disclosure were prohibited by an enactment mentioned in schedule 1 on and from the document coming into existence.
- (3) This section applies in relation to an application under this Act for access to a document mentioned in subsection (1), or for the review of a decision under this Act about access to a document mentioned in the subsection, whether the application was made before or after the commencement of the subsection.
- (4) In this section—

*derailment* means the derailment of the tilt train operated by Queensland Rail derailed on or about 16 November 2004 at Berajondo.

*investigation* see the *Transport Infrastructure Act 1994*, section 213B.

*rail safety officer* means a person who is a rail safety officer under the *Transport Infrastructure Act 1994*.

## **Division 4                      Provisions for Freedom of Information and Other Legislation Amendment Act 2005**

### **113      Definition for pt 10**

In this part—

*amending Act* means the *Freedom of Information and Other Legislation Amendment Act 2005*.

### **114      Application of amendments to existing applications**

- (1) This Act, as in force at the time an access application or amendment application is received, continues to apply in relation to the application as if any subsequent amendment of the Act under the amending Act had not been enacted.

- (2) However, section 42,<sup>64</sup> as amended by section 24(2) and (3) of the amending Act (the ***section 24 amendment***), applies in relation to an access application received before the commencement of the section 24 amendment.
- (3) Also, subsection (1) applies subject to section 115.
- (4) In this section—

***access application*** means an application for access to a document.

***amendment application*** means an application for amendment of information including the addition of a notation to information.

***subsequent amendment***, in relation to an application, means an amendment that commences after the application is received.

## **115 Application of particular amendments to reviews etc.**

- (1) Section 73(1)(d),<sup>65</sup> as in force immediately before the commencement of section 38 of the amending Act, continues to apply in relation to an application for review made within 60 days after the commencement as if the amending Act had not been enacted.
- (2) Section 74,<sup>66</sup> as inserted by section 39 of the amending Act (the ***section 39 amendment***), applies in relation to a review whether started before or after the commencement of the section 39 amendment.
- (3) Section 77,<sup>67</sup> as inserted by section 40 of the amending Act (the ***section 40 amendment***), applies in relation to a review whether started before or after the commencement of the section 40 amendment.

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64 Section 42 (Matter relating to law enforcement or public safety)

65 Section 73 (Applications for review)

66 Section 74 (Commissioner to notify agency or Minister)

67 Section 77 (Commissioner may decide not to review)

- (4) Section 87,<sup>68</sup> as inserted by section 44 of the amending Act (the **section 44 amendment**), applies in relation to a review of an access application whether received before or after the commencement of the section 44 amendment.
- (5) Section 89A,<sup>69</sup> as inserted by section 45 of the amending Act (the **section 45 amendment**), applies whether the error was made before or after the commencement of the section 45 amendment.
- (6) Section 99A,<sup>70</sup> as inserted by section 49 of the amending Act (the **section 49 amendment**), applies in relation to proceedings whether started before or after the commencement of the section 49 amendment.
- (7) In this section—  
**access application** means an application for access to a document.

## 116 Charges for existing applications for access

- (1) The *Freedom of Information Regulation 1992*, as in force immediately before the commencement of section 56 of the amending Act (the **section 56 amendment**), continues to apply in relation to charging for an existing application as if the section 56 amendment had not been enacted.
- (2) In this section—  
**existing application** means an application made, before the commencement of the section 56 amendment, for access to a document that does not concern the applicant's personal affairs.

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68 Section 87 (Commissioner to ensure non-disclosure of particular matter)

69 Section 89A (Correction of mistakes in decisions)

70 Section 99A (Third party proceedings)



**117 Continuation of appointment as commissioner**

A person who, immediately before the commencement of section 101G,<sup>71</sup> was the commissioner continues as the commissioner.

**118 Continuation of current staff member's employment under Public Service Act 1996**

- (1) On the commencement—
  - (a) a current officer is employed under the *Public Service Act 1996*; and
  - (b) the current officer is entitled to retain all existing and accruing rights, including rights under former section 70D(1), in relation to the current officer's employment as an officer of the commissioner; and
  - (c) the current officer's service as an officer of the commissioner must be regarded as service as a public service officer for deciding the current officer's rights as a public service officer; and
  - (d) the fact of employment under the *Public Service Act 1996* does not break the current officer's continuity of service.
- (2) On the commencement—
  - (a) a current employee is employed on an equivalent basis under the *Public Service Act 1996*, section 113;<sup>72</sup> and

*Examples—*

- 1 A current employee who was a part-time temporary employee is employed on a temporary basis and part-time under the *Public Service Act 1996*, section 113, that is, under section 113(2)(a).
- 2 A current employee who was a casual employee is employed on a casual basis under the *Public Service Act 1996*, section 113, that is, under section 113(2)(b).

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71 Section 101G (Appointment)

72 *Public Service Act 1996*, section 113 (Employment of temporary employees)

*Freedom of Information Act 1992*

- (b) the current employee is entitled to retain all existing and accruing rights in relation to the current employee's employment under former section 70B; and
- (c) the current employee's service as an employee under former section 70B must be regarded as service as an employee under the *Public Service Act 1996*, section 113 for deciding the current employee's rights under that Act; and
- (d) the fact of employment under the *Public Service Act 1996* does not break the current employee's continuity of service.
- (3) In this section—

***current employee*** means a person who, immediately before the commencement, was a temporary employee or casual employee employed by the commissioner under former section 70B.<sup>73</sup>

***current officer*** means a person who, immediately before the commencement, was an officer of the commissioner appointed under former section 70.<sup>74</sup>

***former section 70*** means section 70 as in force from time to time before the commencement.

***former section 70B*** means section 70B<sup>75</sup> as in force from time to time before the commencement.

***former section 70D(1)*** means section 70D(1)<sup>76</sup> as in force from time to time before the commencement.

***the commencement*** means the commencement of section 101V.<sup>77</sup>

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73 Section 70B (Temporary and casual employees)

74 Section 70 (Officers)

75 Section 70B (Temporary and casual employees)

76 Section 70D (Preservation of rights if public service officer appointed)

77 Section 101V (Staff employed under Public Service Act 1996)

**119 Report to Legislative Assembly**

(1) It is sufficient compliance with section 108(4) for the report under section 108(1) in relation to the financial year ending 30 June 2005 to include the particulars stated in former section 108(4) in relation to each agency and Minister.

(2) In this section—

*former section 108(4)* means section 108(4) as in force immediately before the commencement of section 54 of the amending Act.

**120 Reports of commissioner**

It is sufficient compliance with section 101 for a report mentioned in the section in relation to the financial year ended 30 June 2005 to comply with section 101 as in force before the commencement of section 50<sup>78</sup> of the amending Act.

**121 Amendment of regulation by Freedom of Information and Other Legislation Amendment Act 2005 does not affect powers of Governor in Council**

The amendment of the *Freedom of Information Regulation 1992* by the amending Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

**122 Re-enactment of regulation-making power does not affect validity of Freedom of Information Regulation 1992**

The re-enactment of section 109 by the amending Act did not repeal the *Freedom of Information Regulation 1992* or any provision of that regulation.

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78 Section 50 (Amendment of s 101 (Reports of commissioner)) of the amending Act

**Part 11****Transitional provision for State  
Development and Public Works  
Organisation and Other  
Legislation Amendment Act  
2005****123 Application of amendment of definition *department***

Section 47A,<sup>79</sup> as amended by the *State Development and Public Works Organisation and Other Legislation Amendment Act 2005*, applies in relation to an application under this Act for access to a document, or for the review of a decision under this Act about access to a document, whether the application was made before or after the commencement of this section, as if the amendment of section 47A had effect on and from the commencement of the *Administrative Arrangements Order (No. 2) 2005*.<sup>80</sup>

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79 Section 47A (Matter relating to investment incentive scheme)

80 The *Administrative Arrangements Order (No. 2) 2005* commenced on 28 July 2005.

## **Schedule 1      Secrecy provisions giving exemption**

section 48 of the Act

*Aboriginal Cultural Heritage Act 2003*, section 29(2)

*Adoption of Children Act 1964*, section 59(3)

*Australian Crime Commission (Queensland) Act 2003*, sections 19 and 20, to the extent they apply to a summons or notice that includes a notation under section 21 of that Act

*Child Protection Act 1999*, sections 186 to 188

*Child Protection (Offender Reporting) Act 2004*, section 70

*Debits Tax Act 1990*, section 8 (to the extent it applies section 7(2) of the *Debits Tax Administration Act 1982* (Cwlth) because of the *Debits Tax Repeal Act 2005*, section 5<sup>81</sup>)

Financial Institutions Code, section 410

*Juvenile Justice Act 1992*, section 288

*Maintenance Act 1965*, section 129

*Taxation Administration Act 2001*, part 8, so far as it applies to personal confidential information under that Act

*Torres Strait Islander Cultural Heritage Act 2003*, section 29(2)

*Transport Infrastructure Act 1994*, chapter 7, part 6, division 4

*Whistleblowers Protection Act 1994*, section 55(1)

*Witness Protection Act 2000*, sections 36 and 38

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81 *Debits Tax Repeal Act 2005*, section 5 (Saving provision for pre-repeal debits)

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## Schedule 2      Application of Act to GOCs

section 11A of the Act

<b>GOC</b>	<b>Application provision</b>
1 Queensland Rail, or a port authority (within the meaning of the <i>Transport Infrastructure Act 1994</i> ) that is a GOC	<i>Transport Infrastructure Act 1994</i> , section 486
2 Queensland Investment Corporation	<i>Queensland Investment Corporation Act 1991</i> , section 37
3 State electricity entity, within the meaning of the <i>Electricity Act 1994</i>	<i>Electricity Act 1994</i> , section 256
4 The GOC that was the commercialised business unit known as State Water Projects in the Department of Natural Resources	<i>Water Act 2000</i> , section 998
5 Golden Casket Lottery Corporation Limited ACN 078 785 449	<i>Lotteries Act 1997</i> , section 225A

## Schedule 3      Application of Act to other Acts

section 11D

*Biodiscovery Act 2004*, section 116<sup>82</sup>

*Crime and Misconduct Act 2001*, sections 120 and 371(4)<sup>83</sup>

*Education (General Provisions) Act 1989*, section 69<sup>84</sup>

*Gene Technology Act 2001*, section 187(3)<sup>85</sup>

*Police Powers and Responsibilities Act 2000*, sections 122, 321 and 401<sup>86</sup>

*Police Service Administration Act 1990*, section 5A.22<sup>87</sup>

*Prostitution Act 1999*, section 137<sup>88</sup>

*Public Sector Ethics Act 1994*, section 33A<sup>89</sup>

*Sugar Industry Act 1999*, section 107T<sup>90</sup>

*Workers' Compensation and Rehabilitation Act 2003*, sections 379(2) and 475(2)<sup>91</sup>

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82 *Biodiscovery Act 2004*, section 116 (Freedom of Information Act 1992 does not apply to benefit sharing agreement)

83 *Crime and Misconduct Act 2001*, sections 120 (Acts that do not apply to divs 2–5) and 371 (Warrants)

84 *Education (General Provisions) Act 1989*, section 69 (Freedom of Information Act 1992)

85 *Gene Technology Act 2001*, section 187 (Confidential commercial information must not be disclosed)

86 *Police Powers and Responsibilities Act 2000*, sections 122 (Certain Acts do not apply to this part), 321 (Certain Acts do not apply to this chapter) and 401 (Particular Acts do not apply to this division)

87 *Police Service Administration Act 1990*, section 5A.22 (Application of Freedom of Information Act 1992)

88 *Prostitution Act 1999*, section 137 (Application of Freedom of Information Act)

89 *Public Sector Ethics Act 1994*, section 33A (Freedom of Information Act does not apply)

90 *Sugar Industry Act 1999*, section 107T (Exempt matter)

91 *Workers' Compensation and Rehabilitation Act 2003*, sections 379 (Application of various other Acts) and 475 (Application of various other Acts)

## **Schedule 4      Process for assessment of charges**

section 35D

### **Part 1              Preliminary assessment process**

#### **1              Preliminary assessment of charges**

- (1) This section applies if an agency or Minister considers a processing charge or access charge is payable in relation to an application.
- (2) The agency or Minister must give the applicant a written notice (a *preliminary assessment notice*) stating—
  - (a) the agency's or Minister's preliminary assessment of the amount of any processing charge or access charge; and
  - (b) the basis on which the preliminary assessment is made.
- (3) The preliminary assessment notice must also state the following—
  - (a) that the applicant may consult with a stated officer of the agency or a stated member of the staff of the Minister with a view to making an application in a form that would reduce the original charge;
  - (b) the effect of sections 2 and 3(1) and (2);<sup>92</sup>
  - (c) any matters that may be taken into account under the Act or a regulation in deciding whether any processing charge and access charge should be waived because the applicant is in financial hardship;
  - (d) the original deposit, if any.

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92 Sections 2 (Deemed withdrawal of application) and 3 (Objection notice)



## Schedule 4 (continued)

**2 Deemed withdrawal of application**

An application is taken to have been withdrawn unless, within the period of 30 days, or the further period the agency or Minister allows, after the preliminary assessment notice is given—

- (a) if an original deposit is stated in the notice—the applicant pays the original deposit and agrees in writing to pay the original charge; or
- (b) if an original deposit is not stated in the notice—the applicant agrees in writing to pay the original charge; or
- (c) the applicant gives the agency or Minister an objection notice.

**Part 2 Objection process****3 Objection notice**

- (1) An applicant is not entitled to a review under section 52<sup>93</sup> of the Act of a preliminary assessment notice.
- (2) However, within the period of 30 days, or the further period the agency or Minister allows, after a preliminary assessment notice is given, the applicant may give the agency or Minister a written notice (an *objection notice*) of, including the reasons for, an applicant's contention that—
  - (a) an original charge has been wrongly assessed and should be reduced on a proper assessment; or
  - (b) any processing charge and access charge should be waived because the applicant is in financial hardship.
- (3) Subject to section 10,<sup>94</sup> the agency or Minister may decide, in relation to an objection notice, that—

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93 Section 52 (Internal review) of the Act

94 Section 10 (Financial hardship claim by non-profit organisation)

**Schedule 4 (continued)**

- (a) the original charge was wrongly assessed and should be reduced on a proper assessment; or
- (b) any processing charge and access charge are to be waived because the applicant is in financial hardship; or
- (c) the contention in the objection notice should be rejected.

**4 New preliminary assessment notice**

- (1) If the agency or Minister makes a decision mentioned in section 3(3)(a), other than a decision that no charges are payable, the agency or Minister must give the applicant a new preliminary assessment notice that also states the following—
  - (a) the new original deposit, if any;
  - (b) that the application will be taken to have been withdrawn unless, within the period of 30 days, or the further period the agency or Minister allows, after the new notice is given—
    - (i) either—
      - (A) if a new original deposit is stated in the notice—the applicant pays the new original deposit and agrees in writing to pay the new original charge; or
      - (B) if a new original deposit is not stated in the notice—the applicant agrees in writing to pay the new original charge; or
    - (ii) the applicant applies for a review under part 5<sup>95</sup> of the Act of the new preliminary assessment notice;
  - (c) the applicant may not give the agency or Minister a further objection notice and is not entitled to a review under section 52<sup>96</sup> of the Act of the new preliminary assessment notice.

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95 Part 5 (External review of decisions) of the Act

96 Section 52 (Internal review) of the Act

**Schedule 4 (continued)**

- (2) If the applicant fails to comply with subsection (1)(b)(i) or (ii) within the period or further period mentioned in subsection (1)(b), the applicant is taken to have withdrawn the application.

**5 Notice that charges waived**

If the agency or Minister makes a decision mentioned in section 3(3)(b),<sup>97</sup> the agency or Minister must give the applicant a notice stating that any processing charge and access charge is to be waived because the applicant is in financial hardship.

**6 Notice of other decision**

If the agency or Minister makes a decision mentioned in section 3(3)(c), the agency or Minister must give the applicant a notice stating—

- (a) the decision and the reasons for the decision; and

*Note—*

See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision).

- (b) the name and designation of the person making the decision; and
- (c) appropriate information about—
- (i) the applicant's rights to review of the decision; and
  - (ii) the procedure for the exercise of the rights, including, if applicable, particulars of the way in which an application for review under section 52<sup>98</sup> of the Act may be made.

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97 Section 3 (Objection notice)

98 Section 52 (Internal review) of the Act

**Schedule 4 (continued)****7 Deemed decision**

If within the period of 30 days after an applicant gives an agency or Minister an objection notice, the applicant has not received notice of a decision under section 3(3),<sup>99</sup> the principal officer of the agency or the Minister is taken to have made, on the last day of the period, a decision under section 3(3)(c) to which section 6<sup>100</sup> does not apply.

**Part 3 Financial hardship process****8 Concession card given and accepted**

- (1) This section applies if—
  - (a) an applicant who claims to be the holder of a concession card gives an agency or Minister a copy of the concession card before the applicant is given a preliminary assessment notice; and
  - (b) the agency or Minister is satisfied the applicant is the holder of a concession card.
- (2) Section 1<sup>101</sup> does not apply in relation to the application and the agency or Minister must give the applicant a notice stating that any processing charge and access charge is to be waived because the applicant is in financial hardship.

**9 Concession card given but not accepted**

- (1) This section applies if—
  - (a) an applicant who claims to be the holder of a concession card gives an agency or Minister a copy of the

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99 Section 3 (Objection notice)

100 Section 6 (Notice of other decision)

101 Section 1 (Preliminary assessment of charges)

**Schedule 4 (continued)**

- concession card before the applicant is given a preliminary assessment notice; and
- (b) the agency or Minister is not satisfied the applicant is the holder of a concession card.
- (2) Section 1<sup>102</sup> applies in relation to the application and the preliminary assessment notice must—
- (a) state the agency or Minister is not satisfied the applicant is the holder of a concession card; and
- (b) give the reasons the agency or Minister is not satisfied.
- (3) If within the period of 30 days after the applicant gives the agency or Minister a copy of the concession card, the applicant has not received a notice under section 8<sup>103</sup> or a preliminary assessment notice, the principal officer of the agency or the Minister is taken to have made, on the last day of the period, a decision that the agency or the Minister is not satisfied the applicant is the holder of a concession card.

**10 Financial hardship claim by non-profit organisation**

- (1) This section applies if an agency that is a department is given an objection notice in which the applicant contends charges should be waived because the applicant is a non-profit organisation in financial hardship.
- (2) The agency must give the prescribed person a copy of both the application and the objection notice.
- (3) The prescribed person must decide whether or not to waive any processing charge and access charge because the applicant is in financial hardship.
- (4) The prescribed person must advise the agency of the decision and the reasons for the decision.

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102 Section 1 (Preliminary assessment of charges)

103 Section 8 (Concession card given and accepted)

## Schedule 4 (continued)

- (5) For having the prescribed person's decision reviewed under this Act, the prescribed person's decision is taken to be the decision of the agency's principal officer.
- (6) In this section—
- prescribed person* means a person prescribed under a regulation as the person who decides whether any processing charge and access charge may be waived because the applicant is in financial hardship.

## Part 4 Final assessment process

### 11 Final assessment notice

- (1) If a processing charge or access charge is payable in relation to an application, then, in the notice given under section 34<sup>104</sup> of the Act, the agency or Minister must give the applicant a written notice (a *final assessment notice*) stating—
- (a) the agency's or Minister's final assessment of the amount of any processing charge or access charge; and
  - (b) the basis on which the final assessment is made.
- (2) A final assessment notice may be given whether access is to be given immediately or subject to deferral.
- (3) The amount of the processing charge mentioned in a final assessment notice may not be more than the amount of the processing charge mentioned in the preliminary assessment notice.
- (4) The amount of the access charge mentioned in a final assessment notice may be more than the amount of the access charge mentioned in the preliminary assessment notice.

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104 Section 34 (Notification of decisions and reasons) of the Act

**Schedule 4 (continued)**

- (5) If, after the final assessment notice is given, the applicant asks for an additional thing to be done in relation to the provision of access—
- (a) the agency or Minister may give the applicant a new final assessment notice that increases the total amount of the access charge mentioned in the previous final assessment notice; and
  - (b) the applicant must pay the increase.

*Example—*

Assume the access charge mentioned in an agency's final assessment notice is based on supervising the inspection by the applicant of documents for 2 hours. The applicant pays the access charge stated in the final assessment notice. At the inspection, the applicant wishes to continue the inspection for a further 2 hours and to obtain copies of some of the documents. The agency may give the applicant a new final assessment notice that increases the total amount of the access charge mentioned in the previous final assessment notice.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2006. Future amendments of the Freedom of Information Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.



### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	19 November 1992	1 December 1992
2	1993 Act No. 32	3 June 1993	11 June 1993
3	1993 Act No. 59	20 November 1993	20 December 1993
4	1994 Act No. 68	1 January 1995	25 January 1995
5	1995 Act No. 19	11 April 1995	26 April 1995
5A	1995 Act No. 38	15 September 1995	7 August 1996
5B	1996 Act No. 79	1 December 1996	4 February 1997
5C	1996 Act No. 79	28 February 1997	14 March 1997
5D	1997 Act No. 23	22 May 1997	30 May 1997
6	1997 Act No. 23	22 May 1997	8 July 1997
6A	1997 Act No. 82	5 December 1997	15 December 1997
6B	1998 Act No. 22	1 June 1998	1 June 1998
6C	1999 Act No. 55	18 November 1999	2 December 1999
6D	1999 Act No. 85	14 December 1999	17 January 2000
6E	1999 Act No. 85	23 March 2000	24 March 2000
7	1999 Act No. 85	1 July 2000	7 July 2000
7A	2000 Act No. 34	1 October 2000	2 October 2000

*Freedom of Information Act 1992*


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Reprint No.	Amendments to	Effective	Reprint date
7B	2000 Act No. 58	17 November 2000	1 December 2000
7C	2000 Act No. 58	16 March 2001	23 March 2001
7D	2001 Act No. 45	15 July 2001	7 September 2001
7E	2001 Act No. 73	23 November 2001	30 November 2001
7F	2001 Act No. 81	3 December 2001	14 December 2001
7G	2001 Act No. 81	1 January 2002	11 January 2002
7H	2001 Act No. 81	1 March 2002	8 March 2002
7I	2002 Act No. 11	6 June 2002	7 June 2002
8	2002 Act No. 11	1 July 2002	5 July 2002

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Reprint No.	Amendments included	Effective	Notes
8A	2003 Act No. 9	28 March 2003	
8B	2003 Act No. 19	9 May 2003	
8C	2003 Act No. 86	18 November 2003	
8D	2003 Act No. 13 1994 Act No. 8 (amd 2003 Act No. 54)	1 December 2003	
8E	2003 Act No. 77	8 December 2003	
8F	2003 Act No. 79	16 April 2004	
8G	2004 Act No. 8	6 August 2004	
8H	2004 Act No. 22	13 September 2004	
8I	2003 Act No. 83	7 November 2004	
8J	2004 Act No. 19	12 November 2004	
8K	2004 Act No. 54	29 November 2004	
8L	2004 Act No. 37 2004 Act No. 52	1 January 2005	
8M	2005 Act No. 28	31 May 2005	
8N	2005 Act No. 25 2005 Act No. 28	1 July 2005	
9	2005 Act No. 28	1 September 2005	
9A	2005 Act No. 52	10 November 2005	
9B	2005 Act No. 57	28 November 2005	
9C	2005 Act No. 70	8 December 2005	
9D	2003 Act No. 62 (amd 2005 Act No. 65)	1 January 2006	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Changed citations and remade laws	4
Changed names and titles	4
Corrected minor errors	1, 2, 5
Renumbered provisions	3

## **6 List of legislation**

### **Freedom of Information Act 1992 No. 42**

date of assent 19 August 1992  
 pts 3–6 commenced 19 November 1992 (see s 2)  
 remaining provisions commenced on date of assent  
 amending legislation—

### **Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1**

date of assent 3 June 1993  
 commenced on date of assent

### **Freedom of Information Amendment Act 1993 No. 59**

date of assent 20 November 1993  
 commenced on date of assent

### **Freedom of Information (Review of Secrecy Provision Exemption) Amendment Act 1994 No. 34**

date of assent 12 August 1994  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 20 August 1994 (see s 2)

### **Queensland Investment Corporation Amendment Act 1994 No. 38 pts 1, 3**

date of assent 14 September 1994  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 October 1994 (see s 2 and 1994 SL No. 341 ss 2, 8)

### **Electricity Act 1994 No. 64 ss 1–2, 293 sch 4**

date of assent 1 December 1994  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 January 1995 (1994 SL No. 467)

### **Whistleblowers Protection Act 1994 No. 68 ss 1–2, 62 sch 4**

date of assent 1 December 1994  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 16 December 1994 (1994 SL No. 441)

### **Freedom of Information Amendment Act 1995 No. 5**

date of assent 23 March 1995  
 commenced on date of assent

### **National Crime Authority (State Provisions) Amendment Act 1995 No. 19 pts 1, 3**

date of assent 11 April 1995  
 commenced on date of assent

### **Transport Infrastructure Amendment (Rail) Act 1995 No. 32 ss 1–2, 23 sch**

date of assent 14 June 1995  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 1995 (see s 2(2), 1995 SL No. 162 ss 2(3), 19)

**Parliamentary Committees Act 1995 No. 38 ss 1, 35 sch 1**

date of assent 15 September 1995  
commenced on date of assent

**State Financial Institutions and Metway Merger Facilitation Act 1996 No. 29 ss 1–2, 97 sch 2**

date of assent 10 September 1996  
ss 1–2 commenced on date of assent  
s 97 sch 2 commenced 1 December 1996 (see s 2(2), s 3 sch 3 and notice pubd gaz  
29 November 1996 p 1257)

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 14**

date of assent 12 December 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 28 February 1997 (1997 SL No. 35)

**Local Government Legislation Amendment Act 1997 No. 23 pts 1, 7**

date of assent 22 May 1997  
commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1, 2(1), 3 sch**

date of assent 5 December 1997  
commenced on date of assent

**Powers of Attorney Act 1998 No. 22 ss 1–2 ch 9 pt 2**

date of assent 14 May 1998  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 June 1998 (1998 SL No. 123)

**Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3**

date of assent 30 March 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 23 March 2000 (2000 SL No. 45)

**Coal Mining Safety and Health Act 1999 No. 39 ss 1–2, 299 sch 1**

date of assent 2 September 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 16 March 2001 (2001 SL No. 14)

**Public Sector Ethics Amendment Act 1999 No. 55 pts 1, 3**

date of assent 18 November 1999  
commenced on date of assent

**Stipendiary Magistrates and Other Acts Amendment Act 1999 No. 68 pts 1, 3**

date of assent 6 December 1999  
commenced on date of assent

**Prostitution Act 1999 No. 73 ss 1, 2(2)–(3), 179 sch 3**

date of assent 14 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(2)–(3))

**Parliamentary Commissioner and Freedom of Information Amendment Act 1999****No. 85 pts 1, 3**

date of assent 14 December 1999

commenced on date of assent

**Water Act 2000 No. 34 ss 1–2, 1145 sch 3**

date of assent 13 September 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 2000 (2000 SL No. 257)

**Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch**

date of assent 17 November 2000

commenced on date of assent

**Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Freedom of Information Amendment Act 2001 No. 70**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 23 November 2001 (2001 SL No. 222)

**Taxation Administration Act 2001 No. 72 ss 1–2, 164 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 12)

**Ombudsman Act 2001 No. 73 ss 1–2, pt 14, s 108 sch 2**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

**Parliament of Queensland Act 2001 No. 81 ss 1–2, ch 9 pt 8**

date of assent 3 December 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 6 June 2002 (see s 2)

**Public Records Act 2002 No. 11 ss 1, 2(2), 62 sch 1**

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2002 (2002 SL No. 115)

**Juvenile Justice Act 1992 No. 44 s 262(3) sch 3 (this Act is amended, see amending legislation below)**

amending legislation—

**Juvenile Justice Amendment Act 2002 No. 39 ss 1–2, 115, 118 (amends 1992 No. 44 above)**

date of assent 29 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2002 SL No. 350) (amds could not be given effect)

**Health and Other Legislation Amendment Act 2003 No. 9 s 1, pt 2**

date of assent 28 March 2003

commenced on date of assent

**Coroners Act 2003 No. 13 ss 1, 2(2), 106 sch 1**

date of assent 9 April 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2003 (2003 SL No. 296)

**Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch**

date of assent 9 May 2003

commenced on date of assent

**Transport Infrastructure Act 1994 No. 8 s 491(3) (prev s 200A(3)) sch 5 (prev sch 2B) (this Act is amended, see amending legislation below)**

amending legislation—

**Transport Infrastructure and Another Act Amendment Act 2003 No. 54 ss 1–2, 34, 39 (amends 1994 No. 8 above)**

date of assent 18 September 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2003 (2003 SL No. 294)

**Youth Participation in Education and Training Act 2003 No. 62 ss 1, 2(3), pt 8 div 4 (this Act is amended, see amending legislation below)**

date of assent 13 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2006 (see s 2(3))

amending legislation—

**Youth Participation in Education and Training and Another Act  
Amendment Act 2005 No. 65 ss 1, 17–18 (amends 2003 No. 62 above)**

date of assent 28 November 2005

commenced on date of assent

**Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(3), pt 14A**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 2003 (2003 SL No. 310)

**Aboriginal Cultural Heritage Act 2003 No. 79 ss 1–2, 170 sch 1**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 16 April 2004 (2004 SL No. 36)

**Australian Crime Commission (Queensland) Act 2003 No. 83 ss 1–2, 68 sch 1**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 7 November 2004 (automatic commencement under AIA s 15 DA(2))

**Magistrates Amendment Act 2003 No. 86 ss 1, 16 sch**

date of assent 18 November 2003

commenced on date of assent

**Terrorism (Community Safety) Amendment Act 2004 No. 8 pts 1, 5**

date of assent 20 May 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 6 August 2004 (2004 SL No. 147)

**Biodiscovery Act 2004 No. 19 ss 1–2, 130–131**

date of assent 24 August 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 12 November 2004 (2004 SL No. 244)

**Freedom of Information Amendment Act 2004 No. 22**

date of assent 13 September 2004

commenced on date of assent

**Local Government (Community Government Areas) Act 2004 No. 37 ss 1–2, 86 sch 1**

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2005 (2004 SL No. 266)

**Child Protection (Offender Reporting) Act 2004 No. 52 ss 1–2, pt 7 div 3**

date of assent 29 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2005 (2004 SL No. 295)

**Transport Infrastructure Amendment Act 2004 No. 54 ss 1, 13–15**

date of assent 29 November 2004

commenced on date of assent

**Debits Tax Repeal Act 2005 No. 25 ss 1–2, 8**

date of assent 31 May 2005

ss 1–2 commenced on date of assent

remaining provision commenced 1 July 2005 (see s 2)

**Freedom of Information and Other Legislation Amendment Act 2005 No. 28 ss****1–2(1), (3)–(4), ch 2 pt 1**

date of assent 31 May 2005

ss 1–2, 3, 5(1) (to the extent it ins def “backup system”), 8–10, 13–14, 18, 24–27, 57 (to the extent it ins pt 10 hdg, ss 113–115), 58–60 commenced on date of assent (see s 2(3)–(4))

ss 36(1), 51 (ins new sections other than s 101C), 57 (to the extent it ins ss 117–118) commenced 1 July 2005 (see s 2(1))

ss 50, 54 (other than to the extent it ins s 108(4)(b)), 57 (to the extent it ins ss 119–120) commenced 1 July 2005 (2005 SL No. 147)

remaining provisions commenced 1 September 2005 (2005 SL No. 147)

**Cross-Border Law Enforcement Legislation Amendment Act 2005 No. 45 ss 1–2(1), 74 sch 4**

date of assent 14 October 2005

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(1))**Service Delivery and Performance Commission Act 2005 No. 52 s 1, pt 10**

date of assent 10 November 2005

commenced on date of assent

**State Development and Public Works Organisation and Other Legislation Amendment Act 2005 No. 57 pts 1, 4**

date of assent 28 November 2005

commenced on date of assent

**Justice and Other Legislation Amendment Act 2005 No. 70 s 1, pt 13**

date of assent 8 December 2005

commenced on date of assent

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- def **“charge”** ins 2001 No. 70 s 3 sch  
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- def **“corporatised corporation”** ins 1997 No. 23 s 71  
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- def **“office”** ins 2005 No. 28 s 5(1)
- def **“official document of a Minister”** or **“official document of the Minister”** amd 2005 No. 28 s 5(4)
- def **“original charge”** ins 2005 No. 28 s 5(1)
- def **“original deposit”** ins 2005 No. 28 s 5(1)
- def **“parliamentary commissioner”** om 2001 No. 73 s 108 sch 2
- def **“parliamentary committee”** ins 1995 No. 38 s 35 sch 1
- def **“preliminary assessment notice”** ins 2005 No. 28 s 5(1)
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- def **“responsible Minister”** amd 2004 No. 37 s 86 sch 1

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## **8 Preambles from amending legislation**

**Freedom of Information Amendment Act 1993 No. 59 reads, in part, as follows—**

**Whereas—**

(1) The Westminster system of government is based on the responsibility of Cabinet to Parliament and Parliament to the electorate;

(2) The purpose of the convention of Ministerial responsibility under the Westminster system is to secure the collective responsibility of Ministers to Parliament;

(3) The collective responsibility of Ministers is only possible if Cabinet debate is candid and unrestricted;

(4) An object of Parliament in enacting the *Freedom of Information Act 1992* was to ensure that the convention of Ministerial responsibility was preserved;

(5) It is, therefore, the intention of Parliament to make provision, by amendments included in the amendments made by this Act, to remove any doubt that Cabinet documents and discussions are to receive a level of confidentiality appropriate to preserving the convention of Ministerial responsibility intended by Parliament;

**Freedom of Information (Review of Secrecy Provision Exemption) Amendment Act 1994 No. 34 reads, in part, as follows—**

**Parliament’s reasons for enacting this Act are—**

1. In order to balance openness against legitimate claims for secrecy in the interest of people about whom the Government holds information and in the public interest, the *Freedom of Information Act 1992* (the “**FOI Act**”) allows exemptions from access to certain matters.

2. Section 48 of the FOI Act makes matter exempt if it falls within the terms of a specified type of secrecy provision (a “**section 48 secrecy provision**”) and its disclosure would, on balance, be contrary to public interest.

3. The exemption in section 48 operates only for 2 years from the FOI Act’s date of assent on 19 August 1992.

4. On a reference from the Government, the Queensland Law Reform Commission has reviewed existing secrecy provisions in Queensland legislation identified by Government departments.

5. The purpose of the review was to—

- (a) identify section 48 secrecy provisions; and
- (b) recommend whether the exemption from access given by each section 48 secrecy provision should continue.

**6.** As a result of its review, the Commission recommended that the exemption from access given by the section 48 secrecy provision in certain Acts should continue.

**7.** The Parliament of Queensland accepts the recommendation.

**8.** The Parliament of Queensland also considers the exemption from access given by the section 48 secrecy provision in section 83 of the *Criminal Justice Act 1989* should continue.